

# EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

AMANDA FEENSTRA, et al., )  
Plaintiffs, )  
vs. ) Case No. 10-CV-234-JFH-FHM  
JARED SIGLER, et al., )  
Defendants. )

VIDEO-TAPED AND ZOOM DEPOSITION OF CURTIS DELAPP  
TAKEN ON BEHALF OF THE PLAINTIFFS  
ON NOVEMBER 6, 2020, BEGINNING AT 8:14 A.M.  
FROM OKLAHOMA CITY, OKLAHOMA

APPEARANCES:

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SHARONICA CARTER:

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REPORTED BY: SUSAN E. BOUDIN, CSR

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Q. (By Mr. Fowler) Mr. DeLapp, I'm going to ask that you or Mr. Esser follow up with a citation to a statute that you believe gives you that privilege or authority. Okay?

A. No.

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S T I P U L A T I O N S

It is hereby stipulated and agreed by and between the parties hereto, through their respective attorneys, that the deposition of CURTIS DELAPP may be taken pursuant to agreement and in accordance with the Oklahoma Discovery Code on November 6, 2020, before Susan E. Boudin, CSR.



1 THE VIDEOGRAPHER: All right. This is the  
2 deposition of Curtis DeLapp in the matter of Feenstra  
3 and Carter versus Sigler. Today is November the 6th,  
4 2020, and we're on the record at 8:14 central time.

5 Will Counsel please state their appearances  
6 for the record?

7 MR. FOWLER: This is John Fowler with the  
8 Lawyers Committee. I'm here on behalf of Amanda  
9 Feenstra, being named Amanda Ackerson, as well as  
10 Plaintiff Sharonica Carter, and I'm joined here with  
11 my colleague, Arthur Aago, also from the Lawyers  
12 Committee.

13 MR. PEDERSON: This is Devan Pederson. I  
14 represent Judges Thomas, Vaclaw, and Sigler. I  
15 believe possibly Judge Thomas and Sigler are -- going  
16 to be at least part of this deposition.

17 MR. WILLIFORD: And Jon Williford on  
18 behalf of Craig Sutter and the OIDS Indigent Defense  
19 System.

20 THE VIDEOGRAPHER: Okay. Thank you. The  
21 court reporter will now swear the witness.

22 CURTIS DELAPP,  
23 of lawful age, being first duly sworn, deposes and  
24 says in reply to the questions propounded as follows:

25 THE WITNESS: And I'm going to throw in the

1 presence of Rick Esser, who is an attorney here in  
2 Bartlesville.

3 MR. FOWLER: Very good.

4 DIRECT EXAMINATION

5 BY MR. FOWLER:

6 Q. Good morning, Mr. DeLapp.

7 A. Good morning.

8 Q. We're conducting these depositions by  
9 video-conference with, as you just saw, the court  
10 reporter swearing witnesses in. Appreciate you being  
11 here. As I mentioned, I'm here on behalf of the  
12 Plaintiffs with my colleague, Arthur Aago.

13 I'm going to lay some ground rules for you  
14 as we sort of plan out the day together. I'm going  
15 to ask you questions. You know you're obligated to  
16 answer them to the best of your ability under oath.

17 To make it easier for our court reporter,  
18 please answer each question verbally, no "huh-uh's,"  
19 "uh-huh's," or-head nods. I'm sure you know if you  
20 do that, I'll say, "You're nodding your head for the  
21 record." So if we can just make that as easy as  
22 possible, that would be great.

23 If you don't understand a question from me  
24 or from any other attorney, please ask us to repeat  
25 it or to rephrase it. If you do answer the question,

1 I will under -- I'll assume that you've understood  
2 the question.

3 We'll take breaks every now and then, and  
4 we'll also take a longer break for lunch. If you  
5 have a cell phone on you or any other electronic  
6 device on -- in front of you besides a computer, I'd  
7 ask that you turn it off.

8 One other clarification in the term  
9 defendant. Although you were once a named defendant  
10 in the civil case -- and there are other defendants  
11 in this case, including Judges Thomas and Sigler,  
12 who, I believe are on the phone -- or rather on the  
13 line -- I might use the term defendant during this  
14 deposition.

15 If I use the term defendant in this  
16 deposition, I'm referring to a person or individuals  
17 who appeared in front of you charged with a crime or  
18 a traffic violation, and I'm not referring to you,  
19 and I'm also not referring to any of the judges who  
20 are currently defendants in the case. Do you  
21 understand?

22 A. Yes, I understand.

23 Q. Mr. DeLapp, could you tell us where you're  
24 testifying from?

25 A. Right now I'm in my office, 215 South

1 Choctaw Avenue, Bartlesville, Oklahoma.

2 Q. And you indicated that your attorney, Rick  
3 Esser, is in the room with you?

4 A. Yes, he is.

5 Q. Is there anybody else there in the room  
6 with you?

7 A. No, sir.

8 Q. Mr. DeLapp, have you ever been deposed  
9 before?

10 A. No, sir.

11 Q. Is there anything today that would stop you  
12 from testifying honestly and truthfully? For  
13 example, are you not feeling well, or are you on any  
14 medication that might impair your ability to testify  
15 fully and to testify truthfully?

16 A. No, sir.

17 Q. Mr. DeLapp, when did you first become aware  
18 of this lawsuit in which you were previously named as  
19 a defendant?

20 A. Let me think. I got contacted, I think, by  
21 the Attorney General's office, or I got aware of it.  
22 Then I had to -- I had to contact the Attorney  
23 General's office -- or was it July of 2018 maybe,  
24 somewhere around there.

25 Q. And what did you do to prepare for today's

1 deposition?

2 A. What did I do today? I looked at the --  
3 the -- the exhibits that were sent, and that's it.

4 Q. And when you say, "the exhibits that were  
5 sent," are you referring to Exhibits A through HH, as  
6 in horse, that I sent to your attorney, Rick Esser,  
7 about a week-and-a-half ago, and then one additional  
8 document that I sent last evening?

9 A. No, I didn't see any document last evening.  
10 I -- and the one -- the list I got was A through GG  
11 exhibit. I didn't get a HH. I'm not sure what HH  
12 is.

13 Q. That's okay.

14 A. Last I reviewed was GG.

15 Q. So you've reviewed Exhibits A through GG  
16 that I sent to your attorney, Rick Esser?

17 A. Yes, that's the ones that I got.

18 Q. And have you reviewed them in detail?

19 A. I just looked at them online and read  
20 through them, yeah. I mean, I -- in detail, I guess,  
21 yes.

22 Q. Do you have printed out copies in front of  
23 you, too?

24 A. No. Ive not printed out copies.

25 Q. In preparation for this deposition, did you

1 go to any online system to track what had happened in  
2 the cases of Ms. Carter or Mrs. Feenstra?

3 A. I did look at Mrs. Feenstra's docket on  
4 ODCR. Ms. Carter's was given to me as one of the  
5 exhibits, so that's why I looked at Mrs. -- was it  
6 Feenstra? I looked at hers.

7 Q. Okay.

8 A. I didn't have it.

9 Q. So beyond looking at Mrs. Feenstra's online  
10 docket, what other documents did you review outside  
11 of Exhibits A through GG that they sent your  
12 attorney?

13 A. None, I believe, none.

14 Q. And did you bring that printed out online  
15 docket for Mrs. Feenstra as well?

16 A. Yeah, I have that here. Yes, I did print  
17 that out.

18 Q. Do you have anything else you printed out  
19 besides what we just talked about?

20 A. No.

21 Q. Any other documents related to this case  
22 that are in front of you?

23 A. No.

24 Q. When did you retain Mr. Esser to represent  
25 you?

1 A. When I was notified of this (inaudible)  
2 deposition. That's a hard word this morning.

3 Q. So what date was it that you retained Mr.  
4 Esser?

5 A. Week ago maybe, ten days ago, whenever that  
6 was.

7 Q. So it was sometime after you were served  
8 with a subpoena?

9 A. Yeah, I got -- they -- got contacted by the  
10 process server, made arrangements for them to come,  
11 served me at the office, and so after that, yes.

12 Q. Do you share an office with Mr. Esser?

13 A. Yes.

14 Q. Do you share a legal practice with Mr.  
15 Esser?

16 A. No.

17 Q. What's your relationship with Mr. Esser?

18 A. I rent space from him.

19 Q. Do you share a phone number with Mr.  
20 Esser?

21 A. Yes.

22 Q. Have you talked about this case or this  
23 deposition with Mr. Esser prior to retaining him in  
24 relation to this case?

25 A. No.

1 Q. How long have you shared an office with Mr.  
2 Esser?

3 A. About a year. I think it was about a year  
4 ago.

5 Q. Did you meet with Mr. Esser to prepare for  
6 this deposition after you retained him, either in  
7 person, virtually, or by phone?

8 A. Not really. I mean, I -- he gave me --  
9 he -- I was going to him and asking him about the --  
10 all the E-mails were going to him -- or all the  
11 exhibits went to him, so he -- I got those, and  
12 then --

13 Q. Let me ask again. Did you meet with him to  
14 prepare for this deposition, either virtually or by  
15 phone, or in person?

16 A. No.

17 Q. Did you meet with Mr. Pederson who  
18 introduced himself a moment ago in relation to this  
19 case?

20 A. I don't know Mr. Pederson, other than I  
21 just met him.

22 Q. Did you meet or talk with Mr. Williford,  
23 who introduced himself a moment ago in relation to  
24 this case?

25 A. No, (inaudible).



1 Q. So you've never talked with Mr. Pederson or  
2 Mr. Williford about this case?

3 A. No, not that I remember, no.

4 Q. Have you ever talked with anybody else from  
5 the Office of the Attorney General about this case?

6 A. There was one person that -- early on that  
7 I was in contact with. I can't remember her name,  
8 though. It was a female, a lady.

9 Q. Does Stephanie Lawson sound correct?

10 A. Stephanie Lawson, that is right. Thank  
11 you.

12 Q. Okay. When did you talk with Ms. Lawson  
13 about this case?

14 A. I talked to her about -- right after I got  
15 served with a subpoena, I sent her a -- an E-mail  
16 asking her if they still represented me. I was not  
17 aware that I was dropped out as a defendant.

18 The last contact I had with her, probably  
19 that was, like, July of this -- in July. She was  
20 giving me updates, and I don't know when I was  
21 dropped out as a defendant. I talked to -- I asked  
22 her what should I do about the deposition, and I  
23 was informed --

24 MR. PEDERSON: I'm going to object. If  
25 you're communicating with Ms. Lawson about your

1 representation, you know, that would be a  
2 communication covered by attorney/client privilege  
3 and by statutory privilege as well.

4 And so I just -- I'm just reminding you of  
5 that. It's your privilege, so I'm not going to  
6 assert it on your behalf, but I -- I did just want to  
7 put that on the record.

8 THE WITNESS: That was the last time I  
9 talked to her, was -- had any communication with her  
10 was regarding the deposition.

11 BY MR. FOWLER:

12 Q. So as -- you said you spoke to Mrs. Lawson  
13 in July of 2020?

14 A. No, I got an E-mail -- she would send me  
15 E-mails updating what was the status of the case.

16 Q. You understand that you were not a named  
17 defendant as of July 2020 -- (inaudible) general  
18 rule --

19 A. I think it was -- I -- I -- I apologize.  
20 It was July 2019, so I -- it's been well over, yeah,  
21 a year, year-and-a- -- almost a year-and-a-half since  
22 I received any communication from her, so that would  
23 be 2019. Sorry.

24 Q. And you're saying the OAG never contacted  
25 you to indicate that you had been dropped from the

1 case or that they were no longer representing you?

2 A. No, never did.

3 Q. When you contacted Ms. Lawson after you  
4 were served with a subpoena for this deposition, what  
5 was the substance of your conversation with her?

6 MR. ESSER: Same objection as before.

7 THE WITNESS: Asked them about -- I just  
8 asked her about whether they'd still represent me or  
9 if they were going to appear at the deposition.

10 BY MR. FOWLER:

11 Q. And what was her response?

12 A. She was --

13 MR. ESSER: Same objection.

14 THE WITNESS: Well, she was going to  
15 contact somebody about that.

16 BY MR. FOWLER:

17 Q. And did you get a response from either Ms.  
18 Lawson or anybody else from the OAG about your  
19 questions?

20 A. I got a response that they were not -- that  
21 I was no longer a defendant, and that's when I went  
22 and talked to Mr. Esser.

23 Q. Okay. Are you friends with or do you have  
24 a personal connection with any of the current sitting  
25 judges in Washington County?

1 A. I know all the judges in Washington  
2 County.

3 Q. Okay. Are you friends with any of the  
4 judges that are currently sitting in Washington  
5 County?

6 A. I get along with them, so --

7 Q. How often do you see, for example, Judge  
8 Thomas?

9 A. I'm on her docket maybe once a week,  
10 sometimes a little longer. I'm on some of her  
11 dockets.

12 Q. And outside of the courtroom, how often do  
13 you see Judge Thomas?

14 A. I do not see her outside the courtroom  
15 unless we're -- we're running to someplace out in the  
16 public.

17 Q. I'm going to not pronounce this name  
18 correctly, Judge Vaclaw. Can you correct me on how  
19 to pronounce that?

20 A. Vaclaw.

21 Q. Vaclaw. Judge Vaclaw, how often do you see  
22 him?

23 A. I appear at some of his dockets as well,  
24 could be, you know, once a week or once every couple  
25 weeks. He does criminal dockets.

1 Q. Do you see him outside of the courtroom?

2 A. No.

3 Q. Judge Sigler, how often do you see him?

4 A. See him about the same. He has dockets. I  
5 appear on misdemeanor dockets, and he also conducts  
6 preliminary hearings that I am in, so whenever my  
7 cases take me to the courthouse.

8 Q. Do you see him outside the courtroom?

9 A. No.

10 Q. Judge Williams?

11 A. Judge Franks, I think. Yeah, it's Williams  
12 now, Franks. I had a case in front of her yesterday,  
13 so about the same thing. When I had some cases in  
14 front of her -- she does divorce cases, and it's one  
15 of the cases that I do with her.

16 Q. Do you see Judge Williams outside the  
17 courtroom?

18 A. No.

19 Q. Have you talked with any of those four  
20 individuals about this case?

21 A. No.

22 Q. Not at any point in time?

23 A. Not that I recall. Maybe when I was still  
24 there, when I first got -- it's been a while, I mean,  
25 not that I recall, but maybe when I first got -- when

1 I first was still there, maybe Judge Sigler about  
2 when the case was filed, that's all.

3 Q. What did you talk about the case with --  
4 what was the substance of what you talked about with  
5 Judge Sigler in relation to this case when the case  
6 was first filed?

7 A. That we needed a contact the Attorney  
8 General's Office for representation. That was it.

9 Q. Okay. Mr. DeLapp, when did you first  
10 become an associate district judge?

11 A. 2003.

12 Q. What were you doing before that?

13 A. I was at the district attorney's office. I  
14 was assistant district attorney.

15 Q. Since when?

16 A. Since 1991.

17 Q. And when did you become a full district  
18 judge?

19 A. 2007.

20 Q. Did you preside over sentencings during the  
21 time when you were an associate district judge and a  
22 district judge?

23 A. Yes.

24 Q. How many sentencings did you preside over  
25 when you were an associate or a full district

1 judge?

2 A. No idea. Hundreds, thou -- I mean, I have  
3 no idea.

4 Q. More than 100?

5 A. Oh, yes.

6 Q. More than 1,000?

7 A. Yes.

8 Q. More than 10,000?

9 A. Probably not.

10 Q. So somewhere between 1,000 and 10,000  
11 sentencings?

12 A. Yes. I mean, we're including both  
13 misdemeanors, juveniles, youthful offenders,  
14 and felonies.

15 Q. When I ask you these questions, that  
16 definition's exactly right; everything from juvenile,  
17 YO cases, misdemeanors, traffic cases, as well as  
18 felonies, anything that criminal or pseudo-criminal  
19 in all cases?

20 A. Yes, sir.

21 Q. Did you preside over payment or any of the  
22 (inaudible) hearings for individuals whom you had  
23 sentenced to incarceration when you were an associate  
24 or full district judge? And by that, I mean hearings  
25 that happen after sentencing when these individuals

1 were released from jail or prison and came back to  
2 the courthouse.

3 A. I did do fines and costs collection after I  
4 became an associate district judge, yes.

5 Q. So I want to be clear about a distinction  
6 here. I'm not asking you about fines, fees, or costs  
7 review hearings. I'm talking about a hearing that  
8 happens after sentencing when you, as a judge, were  
9 setting a person's fines or fees or setting their  
10 installment plans for fines or fees, not the reviews  
11 or check-ins. Do you under --

12 A. The clerk's office did that as their --  
13 they had a -- they had a payment plan that would go  
14 to the clerk's office, and then I would review -- I  
15 would review those and sign those.

16 Q. Okay. So you're saying that you never  
17 presided over a hearing itself where you were setting  
18 the fines or fees; is that right?

19 A. I would -- ask how much they could pay a  
20 month and go see the fines and costs clerk, where the  
21 fines and costs clerk would handle that stuff, to set  
22 them up.

23 Q. So is that a yes or a no, that you didn't  
24 preside over a hearing independent of the sentencing  
25 where you set fines or fees or set an installment



1 plan for fines, fees, and costs?

2 A. That would be a no. I'm --

3 Q. You're saying that you directed criminal  
4 defendants to go to the clerk's office?

5 A. That's where we had our fines and costs --  
6 yes, (inaudible).

7 Q. Okay. Now, I want to get to the topic that  
8 you were referencing, the fines, fees, and costs  
9 review hearings. To make sure that we're using your  
10 terminology, what did you call those hearings where  
11 it was checking in with criminal defendants on whom  
12 you had imposed, or a colleague had imposed, fines,  
13 fees, and costs?

14 A. Just the fines and costs hearing, the  
15 review hearing, you know, review hearing.

16 Q. Fines, costs hearing or review hearing?  
17 That's the terminology that you used?

18 A. I would say fines and costs hearing.

19 Q. Very good. For fines, costs review  
20 hearings, how many of those did you preside over when  
21 you were an associate or full district judge?

22 A. I have no idea.

23 Q. Over 1,000?

24 A. Yes.

25 Q. Over 10,000?

1 A. Possibly; a lot.

2 Q. You were the district judge for Washington  
3 County for a portion of the time when you were  
4 serving as a judicial officer. Right?

5 A. Yes.

6 Q. How did you decided which review hearings  
7 the special judges would handle versus those that  
8 you, as an associate district judge, or a different  
9 district judge would handle?

10 When I first became assistant district  
11 judge, the special judge, Myrna Lansdown, was dying  
12 of cancer, so it was me and Judge Dreiling, district  
13 judge. So for that first ten months of that until  
14 she passed away in October, I did all the fines and  
15 costs reviews.

16 And Judge Dreiling hired Judge John Gerkin  
17 as special judge and gave him the fines and costs  
18 docket that was done by Judge Lansdown prior to me  
19 becoming judge. Then when John Gerkin passed away  
20 and -- that's the best way -- Judge Gerkin, when he  
21 retired, then Judge Sigler was hired, and he took  
22 over those.

23 I kept mine that were dealing with youthful  
24 offenders, and I kept mine dealing with people that,  
25 typically if they were on some kind of probation,

1 some kind of community sentencing probation or some  
2 kind of probation, I kept those. I tried to keep  
3 mine, and then the rest of them would go to anything  
4 that was sentenced by prior judges, the special  
5 judges, Judge Gerkin and those, Judge Dreiling and  
6 those would go to the special judge.

7 Q. Let me be sure I'm getting you right then.  
8 At the beginning of your time, because of capacity  
9 issues, you yourself presided over the entire fines  
10 and costs review docket?

11 A. Yes.

12 Q. And then as the -- as you were able to get  
13 folks into the special judge position, you  
14 transitioned that caseload to the special judges; is  
15 that right?

16 A. Yes, I transferred that part -- part of  
17 that case to the special judges, yes.

18 Q. And you held onto any fines and costs  
19 review hearings for individuals, defendants, whom you  
20 had sentenced and were on -- were on a (inaudible)  
21 case or they were on probation or had some sort of  
22 community supervision?

23 A. Yes.

24 Q. Okay. Was that a policy that you set for  
25 the courthouse, that if somebody was on probation or

1 a youthful offender case, the associate district  
2 judge or district judge should hold onto the case or  
3 fines and costs review hearings?

4 A. No, it's just my practice.

5 Q. When that was your practice, when Judge  
6 Gerkin came in and took over the majority of the  
7 fines and costs review hearings, did the other  
8 associate district judge hold onto the cases that  
9 were in that category you described, youthful  
10 offender cases or folks on probation?

11 A. There was no other -- really had one  
12 associate district judge when Judge Gerkin came on,  
13 and it was District Judge Jan Dreiling, Associate  
14 District Judge Curtis DeLapp, Special Judge John  
15 Gerkin. And I don't know what (inaudible) Jan  
16 Dreiling did with hers. He ended up with them, I  
17 guess.

18 Q. You don't know what Judge Dreiling did with  
19 those cases?

20 A. I don't know what she did with her -- after  
21 she sent in (inaudible), she then went to Judge  
22 Gerkin.

23 Q. As an associate district judge or district  
24 judge, did you preside over hearings where defendants  
25 filled out a form or came into your courtroom and

1 made a request to lower their fines, fees, or  
2 costs?

3 A. We did what we call Rule 8 hearings. They  
4 would fill out the form -- everything went to the  
5 court clerk's office or the fines and cost clerk They  
6 would fill out a form or file a form, and then we  
7 would -- we would have hearings, yes.

8 Q. How many of those hearings did you preside  
9 over?

10 A. I'm not sure.

11 Q. Your testimony is that you presided over  
12 what you call Rule 8 hearings during your time as  
13 either associate district judge or district judge?

14 A. Well, yes.

15 Q. Let's do estimates. Did you preside over  
16 more than one of these Rule 8 hearings?

17 A. Yes.

18 Q. Did you preside over more than ten?

19 A. Yes.

20 Q. Did you preside over more than 20?

21 A. Yes.

22 Q. About how many do you think you presided  
23 over?

24 A. Okay. I'm using that term -- when I'm  
25 asking you to clarify -- I'm trying to decide in my

1 mind. The reason I'm hesitating is, I'm using that  
2 term Rule 8 hearing as if to determine whether than  
3 can -- their ability to pay on their request or their  
4 ability to pay if they were arrested, like, on a  
5 failure to appear warrant.

6 Q. I'm asking on criminal defendants' requests  
7 to lower their fines, fees or costs. How many of  
8 those hearings have you presided over during your  
9 time as a Washington criminal officer?

10 A. Maybe around -- not very many, maybe around  
11 20, maybe, yeah.

12 Q. During your sentencing hearings, who else  
13 was in the courtroom that worked for the Washington  
14 County -- that worked for Washington County in one  
15 capacity or another?

16 A. Well, there would be a minute clerk; the --  
17 sometimes the -- on felony cases, the court reporter;  
18 there would be the district attorney's office, and  
19 usually there was a number of them; assistant  
20 district attorneys; there was also OIDS attorneys  
21 that were there, typically. That's about it.

22 Q. Anyone from the sheriff's office?

23 A. Very rarely. Sometimes we have sheriff's  
24 offices there on big dockets, so, yes, there would be  
25 sheriff's office deputies there, so --

1 Q. So what about -- what about when you were  
2 stepping back and did some of the meetings remanding  
3 (inaudible)? Who did that in your courtroom for a  
4 sentencing?

5 A. We would either have a deputy there that  
6 would take the -- but typically we would call and  
7 have the clerk -- the clerk's office or my minute  
8 clerk call -- or call the -- call the security desk  
9 on the first floor to have someone come in and take  
10 custody of that person.

11 Q. Did you have the same minute clerk for the  
12 entire time you were judge?

13 A. No.

14 Q. Who were your minute clerks?

15 A. Crystal Carpenter was a minute clerk, and  
16 Gina Swan was a minute clerk, I believe, part-time.  
17 Carla Fairlie was a minute clerk. There was another  
18 one that I can't remember her name. She didn't --  
19 she wasn't around very long. That's all I can  
20 remember.

21 Q. Did you have a minute clerk at your fines  
22 and costs review hearings?

23 A. Yes.

24 Q. Of those three individuals you mentioned,  
25 who primarily was there with you at the fines and

1 costs review hearings?

2 A. Well, these ones were there for different  
3 time periods, but primarily the last one I had was  
4 Carla Fairlie.

5 Q. Did you regularly have the same deputy come  
6 to your courtroom when you remanded folks, or did it  
7 change over time?

8 A. It changed on all -- it changed almost  
9 every time. There was a group of deputies that were  
10 on the first floor that would come out.

11 Q. Which deputy did you see the most --

12 A. Well --

13 Q. -- for this purpose?

14 A. I couldn't tell you.

15 Q. Did -- did Jared Sigler appear in front of  
16 you before he became a special judge?

17 A. Yes. He was an assistant district  
18 attorney.

19 Q. I want to ask about some of the training  
20 that you received prior to becoming a judge. Prior  
21 to joining the bench, did you get any trainings on  
22 things like ability to pay or fines, fees, and costs  
23 or Rule 8?

24 A. I got information from the court clerk's  
25 office, and then there was, as I recall, one training



1 that we did when I -- they have a new judge  
2 orientation training when you become a new judge, and  
3 you go to Oklahoma City and -- at the Administrative  
4 Office of the Courts when I first became a associate  
5 district judge.

6 Q. Tell me about your training that the  
7 Administrative Office of the Courts covered in  
8 relation to ability to pay fines, fees, costs or Rule  
9 8?

10 A. That's -- I'm not really sure I can -- I  
11 don't remember all that. When you talked about  
12 collecting fines or costs, talked about remanding,  
13 you know, if you remand, what you -- remanding,  
14 trying to -- trying to -- putting an emphasis on  
15 collecting fines and costs, that was part, then  
16 working with the court clerk's office, the -- and --  
17 and relying upon the cost administrator.

18 Q. When you say that the training had an  
19 emphasis on collecting fines, fees, and costs, what  
20 do you mean?

21 A. Well, we had fines and costs and fees that  
22 are assessed in cases, and they were telling us that  
23 those are used to generate some of the funds for the  
24 AOC and the court system.

25 Q. For the AOC training, what were you told

1 about what you had to do to before remanded somebody  
2 for not paying fines, fees, and costs?

3 A. I can't -- I can't recall that  
4 specifically.

5 Q. You said you also got information when you  
6 became a new judge from the court clerk's office  
7 about ability to pay fines, fees, costs or Rule 8.  
8 Could you tell us what information you got from the  
9 clerk's office about those subjects when you first  
10 became judge?

11 A. The forms that were used to -- that were  
12 created -- that were used prior to me coming on the  
13 bench. There's forms that were used by Judge  
14 Lansdown and Judge Lanning, so I got copies of those  
15 forms. They were created in the system before I came  
16 on the bench.

17 Q. Did you meet with any of your colleagues on  
18 the bench about these subjects when you first became  
19 a judge?

20 A. No.

21 Q. When you first became an associate district  
22 judge in 2003, did get any training including  
23 continuing legal education about defendants' ability  
24 to pay at sentencing or post-sentencing hearings?

25 A. No.

1 Q. When you became a district judge in 2007,  
2 did you get any new training?

3 A. No, they don't -- you don't -- you don't do  
4 any new training, no, no, not like a new -- usually  
5 one whenever you're either appointed as a special  
6 judge or you're first elected.

7 Q. Did you get any training throughout your  
8 time as an associate or full district judge about the  
9 statutes that govern the imposition and collection of  
10 fines, fees, and costs?

11 A. No.

12 Q. Throughout your time as a judge, did you  
13 get any training on the constitutional requirements  
14 about the imposition and collection of fines, fees,  
15 and costs?

16 A. No.

17 Q. How did you keep yourself updated on the  
18 case law and statutes and constitutional requirements  
19 related to ability to pay fines, fees, and costs in  
20 Rule 8?

21 A. That -- typically, we would get information  
22 from the cost administrator; we'd go through them.  
23 For example, the -- they would send up -- something  
24 would come to them, and they would send it upstairs.  
25 Other than that, that was about it.

1 Q. Throughout your time as an associate or  
2 full district judge, did you get any of these notices  
3 you're describing coming from the costs administer  
4 about changes in statutes or rules or constitutional  
5 interpretation?

6 A. Repeat that. I'm sorry. Somebody came  
7 in.

8 Q. You just said that you typically got  
9 information from a cost administrator --

10 A. Uh-huh.

11 Q. -- about any changes that might come  
12 through. Right?

13 A. Yes.

14 Q. Okay. So in your time as a judge, did you  
15 get any notifications from the cost administrator in  
16 Washington County about changes that related to  
17 fines, fees, and costs?

18 A. I didn't under -- I don't understand. I --  
19 I'm having -- I'm hav -- about what that relate --  
20 what's the word you used? It's -- I'm not  
21 understanding the one word you're saying, about  
22 (inaudible). What -- what is that? I'm having a  
23 hard time understanding that word.

24 Q. Okay. Why -- why don't you tell us again  
25 what you -- you were testifying what the cost

1 administrator would give you information about?

2 A. That would get -- we'd get notification  
3 maybe there was something that you applied for fines  
4 and costs. I think the -- for one -- one example  
5 would be the new statute that came out that says if  
6 you're released from prison, you have 180 days. That  
7 was something that came from them, I believe, that I  
8 got notice that -- from them that I would need to do  
9 that.

10 Q. Let me pause you there. Your testimony is  
11 that you got notification from the costs  
12 administrators about the change in the statute  
13 relating to people that were released from prison or  
14 jail?

15 A. I believe that is correct.

16 Q. That would be through E-mail. Right?

17 A. No, just probably got told from the actual  
18 cost administrator cost clerk downstairs, or it came  
19 through from -- from downstairs, yes, that it was  
20 something that was -- we needed to do.

21 Q. You would get a paper copy then of some  
22 sort of change in a statute?

23 A. I would look it up probably.

24 Q. Okay. So you're saying that a statute  
25 changed during your time on the bench relating to

1 fines, fees, costs. Right?

2 A. Yes.

3 Q. Did you change your practices at all in  
4 light of the statute that changed relating to fines,  
5 fees, and costs?

6 A. Once -- once -- once you would get -- once  
7 you got notice of it, yeah.

8 Q. I'm not asking you generally, I'm asking  
9 you. Did you change your practices after the statute  
10 related to the collection of fines, fees, and costs  
11 changed?

12 A. I would -- I would try to do that, yes.

13 Q. How did you change your practices after the  
14 statute changed in November of 2016?

15 A. Well, it wasn't in November 2016 that I got  
16 notice of it. It was sometime way later than that.  
17 So there was -- actually, it was about the -- about  
18 the -- close to the end of my time that I got notice  
19 that there was actually a change to the statute.

20 Q. I'm going to pull up Exhibit A, Mr. DeLapp.

21 A. Okay.

22 Q. Can you see Section 1983 (sic) -- excuse  
23 me, Section 983a --

24 A. Yes.

25 Q. -- on the screen? Okay.

1 A. Yes.

2 Q. (Inaudible) fines, costs, and fees. Right?

3 A. Yes.

4 Q. This looks like a fair and accurate copy of  
5 the statute. Right?

6 A. I've -- I've -- I've reviewed the exhibit,  
7 yes.

8 Q. And this is the statute that we've been  
9 talking about that changed when you were on the  
10 bench. Correct?

11 A. Yeah.

12 Q. And it says on capital letter A that it  
13 went into effect on or after November 1st, 2016.  
14 Right?

15 A. Yes.

16 Q. You're saying that you relied on the cost  
17 administrator to update you on laws that were  
18 changing that related to your administration of the  
19 cost docket?

20 A. Yes.

21 Q. And your testimony is that, despite this  
22 law changing on November 1st, 2016, your practices  
23 did not change until you got notification on paper  
24 from the cost administrator in Washington County?

25 A. I didn't say I got it on paper when -- if I

1 would get -- if I would get notice of that. This is  
2 not the statute I'm talking about. I'm talking about  
3 the -- the 160-day -- 180-day after release from DOC  
4 was that statute that I recall. This one here is one  
5 that I just wasn't -- wasn't aware of, you know.

6 Q. Ever seen this statute before?

7 A. I knew there was always the -- I knew there  
8 was always an ability to amend or waive or -- those  
9 fees, but I have not seen this -- looked at the  
10 statute before, yes.

11 Q. I'm going to stop sharing my screen.

12 A. Okay.

13 Q. Can you tell us when the cost administrator  
14 advised you of the change in the other statute that  
15 you're referencing that related to 180 days after a  
16 person got out of jail or prison? You had just said  
17 that it was at the end of your time as a judge.

18 A. About the time in 2018, I believe, is when  
19 I became aware of that.

20 Q. So how did you keep yourself up-to-date on  
21 the laws that were changing in Oklahoma that related  
22 to your duties as a judicial officer?

23 A. Typically, I would ask the -- I get a copy  
24 of the change of laws from -- I would ask the  
25 district attorney's office to give us a copy of their



1 updates.

2 Q. The district attorney's office was a party  
3 that was appearing in front of you. Right?

4 A. Yes.

5 Q. Did you go to the OIDS attorneys and ask  
6 them for any update dates, or did you go to the OIDS  
7 central office and ask them for updates?

8 A. I would get on the OIDS website, yes,  
9 their -- they had an website that I would get on and  
10 check either unpublished -- they had -- they would  
11 have also published caselaw on there that was  
12 helpful.

13 Q. It sounds like you actually called up  
14 somebody from the DA's office; is that right?

15 A. Yes.

16 Q. Who did you call at the DA's office for  
17 advice?

18 A. Well, I didn't ask for advice. I would ask  
19 the DA's office to give me a -- give me a copy of  
20 their -- DA counsel would put out every year updated  
21 laws, changes in laws, and give me a copy of that. I  
22 believe the last person I asked that of was Mr. Will  
23 Drake.

24 Q. Did you ever call up Jared Sigler when he  
25 was at the DA's office and ask him for this update?

1 A. No.

2 Q. And the DA's office did not update you on  
3 the statute that we were just looking at, Exhibit A,  
4 or the statute that you had been talking about that  
5 provided for the 180 days?

6 A. No, that wasn't part of their -- the update  
7 that they gave, no, that I recall.

8 Q. Were you provided, when you came onto the  
9 bench or when you were elevated to a district judge,  
10 anything like a bench card on any of these topics,  
11 like questions you should ask at sentencing about an  
12 individual's ability to pay?

13 A. No, we just basically continued what was  
14 done prior that I observed that was done when I was  
15 in the DA's office.

16 Q. Did you -- when you first came on the  
17 bench, did you showed shadow any of your colleagues  
18 for a week or a month so when you were not serving as  
19 an a ADA, but as a judicial officer?

20 A. No.

21 Q. Did you have any reports or guidance that  
22 were internal to the courthouse on any of these  
23 topics outside of the forms that the cost  
24 administrator gave you when you came onto the  
25 bench?

1           A.    May have sent memos to the court clerk's  
2 office about -- well, those were usually lost minutes  
3 and stuff, so I'm trying to think if I ever sent  
4 anything to the court clerk's office or the clerk  
5 regarding fines and costs. I may have typed up  
6 something in regard to what the normal practice was  
7 and presented that to the other judges as well.

8           I know I did how we did arraignments, tried  
9 to give them a little guide when they came on there.  
10 There might have been fines and costs in there as  
11 well. I don't recall exactly, but that stuff was on  
12 my computer that was still at the courthouse when I  
13 left the bench.

14          Q.    And as long as nobody deleted your  
15 computer, that should still be on the server or in  
16 your E-mail account; is that right?

17          A.    Should be. I -- I -- I don't know what  
18 happened to that. That would be AOC's deal.

19          Q.    I want to go back to something you said.  
20 You said you may have sent memos to the court clerk's  
21 office about lost minutes, where the -- the minutes  
22 were usually lost? What do you mean about that?

23          A.    I found mis -- I would find misplaced  
24 minutes or minutes that were not in the right place,  
25 that they had gotten lost in the system somewhere or

1 they were not there. Typically, they were filed in  
2 other cases, so I would send down -- I would pull  
3 them out of the file or send down a notice and say,  
4 "These belong in a different case."

5 Q. I'm trying to -- I'm trying to make sure I  
6 understand what you're talking about. Are you  
7 suggesting that you distributed minutes related to  
8 fines, fees, and costs that were not specific to a  
9 particular defendant that were lost?

10 A. No, I was just talking about -- I was  
11 just -- we have minutes that are done by the minute  
12 clerk that were misfiled, not fines and costs  
13 necessarily, but just minutes in general that were --  
14 would be lost in the system. So it had to be -- you  
15 know, I -- and I'd have to have them look for them.

16 For example, I would say, "I'm looking for  
17 a minute in a case, might be a court minute," and if  
18 it's not there, they would have to then go pull  
19 files, and it was sometimes misfiled in the wrong  
20 file. Instead of CM 200001, it would be in CF  
21 200001, those kind of things.

22 Q. And what made you bring that up when I  
23 was asking you questions about policies related to  
24 fines, fees, and costs?

25 A. You were asking me about anything I sent,

1 and that popped into my mind, and I was trying to  
2 remember if I'd seen anything besides that, so -- I  
3 was trying to think of all the things that I might  
4 have sent to the court clerk's office through memos  
5 and stuff. I -- so that's why it popped into my  
6 head.

7 Q. So according to you, on how many occasions  
8 were minutes from a case lost or filed in one case  
9 when they should have been filed in another?

10 A. I don't know. I don't -- I don't have a  
11 number on that.

12 Q. More than ten?

13 A. Yes, more than ten.

14 Q. More than 100?

15 A. No, probably not. I don't know, but close  
16 to that maybe.

17 Q. And the minutes that were lost -- that you  
18 say were lost, what subjects did those minutes tend  
19 to relate to?

20 A. They could be a range of all kinds of  
21 different -- just minutes, just court minutes. When  
22 I would go back and look for a court minute that  
23 would be on the computer, but it was not in the  
24 actual file, so it was somewhere, typically in a  
25 different file. Could be a court minute of a hearing

1 that took place. It could be any -- you know, and  
2 beyond just the cases we're talking about, all kinds  
3 of cases.

4 Q. When you joined the bench, were you given  
5 bench cards of any type?

6 A. I don't know what a bench card is.

7 Q. You've never heard of the phrase "bench  
8 card"?

9 A. No.

10 Q. Were you given a manual when you joined the  
11 bench?

12 A. We have a -- there's a trial -- there's a  
13 trial manual, criminal trial manual, yes, that we had  
14 that was in the office when I joined the office.

15 Q. In 2003?

16 A. Yes.

17 Q. What's the title of that manual?

18 A. I have no idea. It's still at the  
19 office.

20 Q. How many pages do you think it was?

21 A. I don't know. It was a notebook, a spiral  
22 notebook, if I recall right.

23 Q. What topics did that manual cover?

24 A. Sentencing, different rights, how to  
25 proceed through different cases and stuff like that.

1 Q. Did they cover fines, fees, and costs  
2 collection?

3 A. Possibly.

4 Q. Did they cover Rule 8?

5 A. I don't recall that, if they covered --  
6 well, might have had Rules 8, yes.

7 Q. Was that manual updated during your  
8 approximately 15 years upon the bench?

9 A. No.

10 Q. Who created that manual?

11 A. AOC.

12 Q. Did you ever receive any other guides  
13 beyond that manual when you first started as a  
14 judge?

15 A. No.

16 Q. I want to ask you about the training you  
17 received when you were an ADA, given that you said  
18 you reached out to the DA's office for updates on  
19 rules and statutes. How long were you at the  
20 district attorney's office?

21 A. 1991 to 2003, 12 years.

22 Q. What training did you receive on a  
23 defendant's ability to pay when fines, fees, and  
24 costs were being imposed through the DA's office?

25 A. None.

1 Q. What training did you receive on Rule 8  
2 hearings when you were at the DA's office?

3 A. None, just observed them.

4 Q. Were you given any guidance when you were  
5 at the DA's office about limits or constraints on the  
6 amount of fines, fees, and costs you would be asking  
7 for in light of statutes or rules or the  
8 Constitution?

9 A. Just the maximum or minimums of a -- of the  
10 fines and costs of the statutes itself.

11 Q. So the only training you got related to  
12 fines, fees, and costs or ability to pay was  
13 essentially the range that were attached to a  
14 particular crime. Is that fair to say?

15 A. Yes.

16 Q. I want to ask about how you conducted  
17 sentencing hearings and how you imposed fines, fees,  
18 and costs as part of a sentence. When you were  
19 imposing a sentence on a criminal defendant, you  
20 didn't know the total of their fines, fees, and  
21 costs; is that right?

22 A. That is correct.

23 Q. Given that, you didn't tell defendants the  
24 total of their fines, fees, and costs at the time you  
25 were imposing your sentence. Right?



1 A. I did not.

2 Q. Who calculated the total of the fines,  
3 fees, and costs?

4 A. The clerk's office there. There was an  
5 attachment to the -- for example, to the Summary of  
6 Facts, and the clerk's office filled that out. They  
7 had -- they pulled that information up.

8 Q. When you say the clerk's office pulled that  
9 information up, what do you mean?

10 A. Well, they have a KellPro system. They can  
11 pull up and see what the costs are. They keep the  
12 costs. So I would know what the fine was; I would  
13 know what the victim compensation was, and there -- I  
14 would know what the restitution was.

15 But as far as any costs or fees or any of  
16 those things that were collected by the court system,  
17 they would add that on into the Attachment A, I  
18 believe.

19 Q. Did you believe that you had a discretion  
20 to lower or waive the amount that the clerk's office  
21 wrote in after they pulled the amount from KellPro?

22 A. No. -- I mean, are you talking about the --  
23 on the fines or the -- the fees?

24 Q. Any of the things that we're talking about,  
25 fines, fees, or costs. Did you have discretion to

1 lower or waive the amount that was provided by  
2 statute or by chart?

3 A. I believe you can lower those. The fines.  
4 You could lower those. I had, in fact, lowered the  
5 fines and fees. There was also a statute regarding  
6 jail incarceration fees. You could lower those, but  
7 you had to reduce the fines and costs by the same  
8 percentage, which I did on some occasions.

9 Q. I'm asking specifically about the order  
10 that was issued after sentencing. Are you saying  
11 that after the clerk's office filled that out and  
12 brought it over to you for your signature, you at  
13 times crossed out the amount and lowered or waived  
14 the amount that they wrote in?

15 A. No. Sorry, I misunderstood. No, I did not  
16 do that.

17 Q. So for the order that was imposed  
18 immediately after sentencing, you did not believe  
19 that you had the discretion to lower or waive what  
20 was being imposed and what was written in by the  
21 court clerk's office?

22 A. I did not do that. Do I believe that I had  
23 discretion to do that? Yes, I think -- of the fines,  
24 you know.

25 Q. You don't believe you had discretion for

1 fees or costs? That's your testimony?

2 A. I believe those were just set.

3 Q. Okay. So how did the -- the clerk  
4 calculate the total of fines?

5 A. I don't know. That's internal to their  
6 office and to the KellPro system, I guess. I don't  
7 know.

8 Q. How did the clerk calculate the total of  
9 fees?

10 A. Same thing. I mean, that information is on  
11 the KellPro system. I mean, there's so much per  
12 subpoena, so mucin -- I mean, there's -- if I recall,  
13 there's, like, 30 different fees that -- maybe more  
14 that was attached to a criminal case, you know, from,  
15 you know, all kinds of fees that -- that the  
16 legislature has attached to those that go along with  
17 the fee -- the fines, and costs.

18 Q. How did the clerk calculate the total of  
19 costs?

20 A. Same thing. I mean, I would get a -- I  
21 would get a list. And if you've seen that -- those  
22 attachment, I would get a list of what the fine was,  
23 what the costs were, and then all these other things.

24 There's a whole -- when we get a -- from --  
25 the court of criminal appeals gives us you a Summary

1 of Facts with attachment to it, there's a number of  
2 blanks on the back with different little initials.  
3 I'm not even sure what all of them are, but, for  
4 example, OSBI fee. If there's a drug case, there's  
5 \$150 OSBI fee, and that's put in. So those are put  
6 onto that list, and they would add those up.

7 Q. The clerks would add those up?

8 A. The clerks would have those. It would  
9 be -- they would be attached to that Summary of  
10 Facts, and the clerks would fill those out, yes --

11 Q. And I want to be --

12 A. -- for the J&S. I'm sorry.

13 Q. I want to be clear. When you say, "the  
14 clerks," are you referring to the minute clerk that  
15 was there in the courtroom with you when you were  
16 conducting sentencings?

17 A. Sometimes it was a minute clerk, sometimes  
18 it was a different clerk, sometimes a fines and cost  
19 clerk that's internal to their office. I can tell  
20 you by looking at it -- that form whose name is at  
21 the bottom, and each one had their -- I think they  
22 put their name at the bottom of who fills -- who  
23 filled the numbers in.

24 Q. Did you tell the clerk assigned to your  
25 cases that they could lower or waive some of the

1 fines, fees, and costs that they were writing in on  
2 the form?

3 A. No.

4 Q. When were those fines, fees, and costs  
5 calculated by the clerk in relation to sentencing?

6 A. After the sentencing, they would fill out  
7 that form. There would be an Attachment A to the  
8 Judgment & Sentence, and at that point in time they  
9 would go through and calculate those except for jail  
10 incarceration fees, which we had to wait for a return  
11 from the sheriff's office to tell us how many days  
12 the person was in the jail.

13 Q. How -- what was the typically time after  
14 sentencing that the clerk would fill out the  
15 Attachment A and start writing in the amounts?

16 A. Well, that depends on -- depended on the  
17 judge, but getting a J&S done -- fortunately, I had a  
18 bailiff that was -- got them in -- got them out  
19 pretty quickly, so maybe a week to ten days, we would  
20 get the J&S out and send it down.

21 Q. And then from the time you got the Judgment  
22 & Sentencing Order down to the clerk's office, how  
23 long did it take for the clerk's office to fill out  
24 Attachment A?

25 A. I've no idea. I mean, I don't know how --

1 I've never tried that.

2 Q. Well, how would you get Attachment A back  
3 for your signature?

4 A. They would send it up after they got --  
5 completed it, and we would -- I would sign that. So  
6 it was a process of getting it -- getting it to them,  
7 getting it back and signing. I don't know how long  
8 that took, though. I -- I -- I really don't. It  
9 just showed up in a -- in a pile that I would review.

10 Q. Did you have any standard speech that you  
11 gave criminal defendants at sentencing about fines,  
12 fees, and costs?

13 A. Well, we would say -- tell them the fines  
14 and costs review date; they need to see fines and  
15 cost clerk on the first floor. I would tell them  
16 that if they were unable to, you know, pay, they --  
17 pay, maybe talk to the fines and cost clerk. There was  
18 information on there where to go, make sure they read  
19 the fines and costs payment plan, because a number  
20 of them didn't do that, and send them to the fines  
21 and cost clerk to fill out the payment plan.

22 Q. That was your standard speech or  
23 admonishment related to fines, fees, and costs that  
24 you would give at sentencing?

25 A. I think so. I mean, a lot of that

1 stuff was -- there would be -- I'm trying to think.  
2 You would think after all that time, I would have it  
3 memorized. But we would talk about fines and costs  
4 and how -- tell them about jail incarceration fees.

5 I would also tell them sometimes that we  
6 won't -- we won't know what that were, that those  
7 would be calculated sometimes later, because it would  
8 take sometimes the jail time to calculate those or to  
9 send that return back to say that this particular  
10 defendant was in the jail a certain period of time  
11 and then to calculate that.

12 Q. When you were sentencing criminal  
13 defendants, you didn't ask about whether they had  
14 fines, fees, and costs from other courthouses across  
15 the State or from other cases?

16 A. No, I just pretty much looked up -- had an  
17 idea of whether or not they owed other fines and  
18 costs in this county, yes.

19 Q. You didn't ask about whether they had  
20 fines, fees, and costs or restitution from other  
21 counties across Oklahoma?

22 A. No, I did not.

23 Q. You didn't ask about their employment  
24 status. Right?

25 A. That was on the fine -- that was on the

1 fines and costs form that they would fill out, yes.

2 I did not ask about --

3 Q. Okay. I want to focus you on, at  
4 sentencing, that form hasn't been filled out yet.  
5 Right?

6 A. That's correct.

7 Q. So at sentencing, you did not ask criminal  
8 defendants about employment status in?

9 A. Sometimes I did, sometimes I didn't.  
10 Depended on the case.

11 Q. At sentencing, you didn't ask criminal  
12 defendants about other financial obligations like  
13 child support or dependents?

14 A. No, I did not.

15 Q. At sentencing, you didn't ask criminal  
16 defendants about whether they had physical or mental  
17 disabilities?

18 A. Sometimes I did, sometimes -- sometimes I  
19 did. It depends -- depended on the case.

20 Q. Tell us what you have ask about when you  
21 sometimes would ask at sentencing?

22 A. Many of these defendants I've known -- I've  
23 known for a number of years, so I would know their  
24 condition and ask what they were -- what their status  
25 was; you know, in this town, know their families,



1 know them and stuff, so I would ask sometimes.

2 Sometimes they would bring their attorney  
3 to bring that up, and we would have a discussions  
4 about those. If there was specific things that were  
5 brought up in regard to their inability to pay,  
6 those -- those were talked about, so --

7 Q. At sentence -- you're saying at sentencing,  
8 things would come up?

9 A. At times, yes.

10 Q. If you didn't know a criminal defendant or  
11 if an attorney didn't bring up disabilities, you  
12 didn't ask about them?

13 A. No, I did not.

14 Q. You didn't tell defendants that they could  
15 lower their total fines, fees, and costs or  
16 installment plans if they had financial or health  
17 problems. Right?

18 A. No. That was -- that -- they  
19 were instructed to talk to the clerk's office about  
20 that -- about that stuff, yeah.

21 Q. You didn't tell the defendants that if they  
22 were compliant with payments for 24 months, that you  
23 as their judge could completely waive their remaining  
24 fines, fees, and costs?

25 A. No, I did not.

1 Q. And, in fact, you didn't even know that  
2 statute existed when you were a judge that permitted  
3 you to completely waive their fines, fees, and  
4 costs?

5 A. That's correct.

6 Q. And that was Exhibit A that I just showed  
7 you that I sent to your attorney a week-and-a-half  
8 ago?

9 A. Yes.

10 Q. At sentencing, you didn't ask criminal  
11 defendants about their ability to immediately pay  
12 fines, fees, and costs that would imposed in the  
13 future?

14 MR. WILLIFORD: Object to the form.

15 THE WITNESS: Some cases, yes; some cases,  
16 no.

17 BY MR. FOWLER:

18 Q. Well, Mr. DeLapp, you didn't know the total  
19 of their fines, fees, and costs at sentencing.  
20 Right?

21 A. Correct. I did not know the total but I  
22 had people that said, "I can pay the whole thing  
23 today, Judge," and I would say, "Well, how would you  
24 do that?" And then --

25 Q. Mr. DeLapp, you were not actually imposing

1 the fines, fees, and costs on them at sentencing.

2 Correct?

3 A. The fines? Yes, I would say, You are  
4 ordered to pay a \$500 fine, a \$50 victim compensation  
5 assessment, \$7.00 penalty assessment, the court  
6 costs, and the fine -- and the fees, and they would  
7 be ordered to pay that. Then they would go set up a  
8 payment plan, whatever that meant. I mean, I did --  
9 not -- with their total, but they were ordered to pay  
10 those at that time.

11 Q. You did not ask criminal defendants about  
12 whether they could pay a total that had not even been  
13 calculated yet?

14 MR. WILLIFORD: Object to the form.

15 THE WITNESS: Yes, occasionally they said  
16 they could pay the total. I did not ask them,  
17 correct.

18 BY MR. FOWLER:

19 Q. Did you ever ask a criminal defendant  
20 whether they could pay the total of their fines,  
21 fees, and costs?

22 A. I think I -- if an attorney had indicated  
23 they could do that, I would ask them that question,  
24 yes.

25 Q. I'm talking about at sentencing, did you

1 ever at sentencing ask a criminal defendant whether  
2 they could pay the total of their fines, fees, and  
3 costs?

4 A. Yes.

5 Q. On how many occasions?

6 A. Not very many.

7 Q. Typically you would not ask; is that fair  
8 to say?

9 A. Typically I would not ask.

10 Q. And at sentencing, did you ever ask  
11 criminal defendants about their ability to pay on an  
12 installment plan?

13 A. That was -- that was the -- the system we  
14 had, yes. We would go down (inaudible) -- the court  
15 clerk's office set up a payment plan.

16 Q. Let me ask my question again. At  
17 sentencing, when you were the judge in a case, did  
18 you ask criminal defendants about their ability to  
19 pay their fines, fees, and costs on an installment  
20 plan?

21 A. I did not ask them, I sent them to the  
22 clerk's office to set up a payment plan at  
23 sentencing.

24 Q. The answer to my question is, no, you did  
25 not ask criminal defendants about their ability to

1 pay on a installment plan?

2 A. No. They were sent to the clerk's office.

3 Q. Clerk isn't a judge. Right?

4 A. That's correct.

5 Q. So am I getting it right that the total of  
6 fines, fees, and costs was calculated for criminal  
7 defendants after their sentencing hearings by a  
8 minute clerk or a cost administrator or a different  
9 clerk in the courthouse?

10 A. Yes.

11 Q. Did you instruct these other employees of  
12 the courthouse to inquire about fines, fees, and  
13 costs from other jurisdictions?

14 A. No.

15 Q. What guidance did you give the minute clerk  
16 or cost administrator or other clerks in calculating  
17 the total of fines, fees, and costs?

18 A. The only thing I gave them was what I  
19 imposed as far as the fine, the victim compensation  
20 assessment, if there was an OSBI fee, and that was  
21 the -- the numbers that I would give them and they  
22 would add into that whatever the fine -- the fees and  
23 the -- and -- were of the case. So I didn't give  
24 them any further instruction. That was why we had a  
25 cost administrator.

1 Q. The only guidance you gave the clerk or  
2 cost administrator calculating the total of fines,  
3 fees, and costs were the numbers that you had already  
4 calculated; is that correct?

5 A. The numbers that I imposed, I didn't  
6 calculate them, I just say set at sentencing what  
7 the finalize in those things, and then they would --  
8 they filled out a little piece of paper, wrote  
9 down -- the clerk -- the minute clerk wrote down on a  
10 piece of paper that the fine was this amount, the VA  
11 was this amount, the OSBI was -- fee was this amount,  
12 give that to the defendant, defendant would take that  
13 to the fines and cost clerk what I just ordered, and  
14 then she would -- she would then look up also then --  
15 she would look up what the costs of a case were and  
16 add those in.

17 Q. So the minute clerk actually calculated  
18 some of these numbers that you're talking about?

19 A. No, just recorded and passed it on.

20 Q. That was the only guidance that you  
21 provided the minute clerk or the cost administrator  
22 or the other clerk in calculating the total of fines,  
23 fees, and costs?

24 A. Yes.

25 Q. Did you instruct the individual calculating

1 the total of fines, fees, and costs to review  
2 criminal defendants' affidavits of indigency?

3 A. No.

4 Q. Did you instruct the individual conducting  
5 the calculation of total fines, fees, and costs to  
6 look into employment or financial status or  
7 dependents or disability?

8 A. I did not. It said this on the form that  
9 they -- that I signed, and I would look at that to  
10 see if they were employed and stuff after the clerk's  
11 office inquired.

12 Q. Let me -- let me ask you, outside of  
13 employment, did you instruct the person doing the  
14 calculation of the total of fines, fees, and costs to  
15 inquire into number of dependents?

16 A. No.

17 Q. And you didn't instruct your clerk to  
18 inquire into physical or mental stability.  
19 Correct?

20 A. I didn't -- the -- yeah, the fines and  
21 costs clerk, no.

22 Q. You didn't instruct the individual  
23 calculating the total of fines, fees, and costs to  
24 consider community service as an alternative to a  
25 total of fines, fees, and costs?

1 A. Some cases, yes, we did that. We would do  
2 community service and fines and costs.

3 Q. Let me ask my question again. I'm asking  
4 about your communications with the clerk who  
5 calculated the total of fines, fees, and costs. Do  
6 you understand the subject I'm asking you about?

7 A. Yes.

8 Q. Did you ever instruct the clerk who was  
9 calculating the total of fines, fees, and costs to  
10 consider community service as an alternative to  
11 fines, fees, and costs?

12 A. There were cases where I talked to the  
13 fines and cost clerk about doing community service,  
14 but as far as instructing them, no.

15 Q. Did you instruct the clerk calculating the  
16 total fines, fees, and costs to tell criminal  
17 defendants that they could seek to lower the total of  
18 their fines, fees, and costs if their financial or  
19 health status changed?

20 A. Yes.

21 Q. And who did you tell that to?

22 A. The fines and cost clerk.

23 Q. Your testimony is that when you were a  
24 judge, you told the cost administrator who was  
25 working in the courthouse, that they should be



1 telling criminal defendants that fines, fees, and  
2 costs, total, could be lowered. That's your  
3 testimony?

4 A. That they -- they could request the -- a --  
5 they could request a reduction or request a  
6 modification of the fines, fees, and costs at the --  
7 during the course of their coming back for review  
8 hearings, yes, I did that.

9 Q. On how many occasions?

10 A. I don't know, can't tell you.

11 Q. Why didn't you do any of the things I just  
12 asked you about, telling your clerk to ask about  
13 dependents or disability or reviewing Affidavits of  
14 Indigency?

15 A. Because the fines and cost clerk that  
16 was -- AOC dealt with her, and she got her training  
17 from AOC, so I relied upon that.

18 Q. Is it fair to say that you relied on the  
19 clerk to do the calculation of what total of fines,  
20 fees, and costs was appropriate for a criminal  
21 defendant?

22 A. Not appropriately. I relied on her  
23 calculation of what the total was.

24 Q. You had said that Attachment A would be  
25 completed by the clerk or cost administrator, and

1 then they would send it back to you for your  
2 signature?

3 A. That's correct, yes. I would sign it at --  
4 at that point, yes.

5 Q. Okay. How would they send it back to  
6 you?

7 A. I have a box downstairs, and they would  
8 come up -- my bailiff would pick them up, and I have  
9 a pile of stuff to sign.

10 Q. When you were signing off on the total of  
11 fines, fees, and costs, did you look back at your  
12 notes that you took about defendants' employment or  
13 criminal history?

14 A. No.

15 Q. When you were signing off on the total of  
16 fines, fees, and costs, did you go back and review  
17 the Affidavits of Indigency for folks who had been  
18 appointed an OIDS attorney?

19 A. No.

20 Q. Did you ever decline to sign the order  
21 prepared by the person who calculated the total of  
22 fines, fees, and costs?

23 A. No.

24 Q. Why not?

25 A. I relied on them to have -- knowing what

1 their job was.

2 Q. So you never decreased the total of fines,  
3 fees, and costs that was prepared by the clerk or  
4 cost administrator?

5 A. No.

6 Q. When you signed off on the total of fines,  
7 fees, and costs, were you in chambers or in the  
8 courtroom?

9 A. In my chambers, typically at my bailiff's  
10 desk there.

11 Q. When you were signing off on the total of  
12 fines, fees, and costs, were the defendants whose  
13 fines, fees, and costs you were approving in chambers  
14 with you?

15 A. No.

16 Q. Were there attorneys there with you?

17 A. No.

18 Q. Did you communicate at all with the  
19 defendants whose fines, fees, and costs you were  
20 approving and signing off on?

21 A. No, not at that time, no. We had fine and  
22 costs return dates, but not at that time, you know.

23 Q. I want to ask you specifically about the  
24 segment of criminal defendants whom you did sentence  
25 to incarceration. For those individuals, did you

1 order them to come back to the courthouse after they  
2 were released from jail or prison in relation to  
3 their fines, fees, and costs?

4 A. Yes. I believe their -- the their -- J&S  
5 said that, yes, and I would tell them they had to  
6 return to set up a payment plan, yes.

7 Q. And that payment plan, did you tell them  
8 that you would set it up with them or that it would  
9 be set up with the cost administrator?

10 A. Cost administrator.

11 Q. And for those individuals whom you had  
12 sentenced to incarceration, why did you tell them to  
13 go back to see the cost administrator and not you?

14 A. Because that was the purpose of having a  
15 cost administrator, was my understanding. That --  
16 and that's what D -- I think that's what DOC told  
17 them as well, is to see the fines and cost clerk.

18 Q. For those individuals whom you ordered to  
19 come back to the courthouse after their incarceration  
20 period, did you conduct a hearing on their ability to  
21 pay when they showed up to the courthouse?

22 A. No, they went to the fines and cost  
23 clerk.

24 Q. Why not?

25 A. Because the -- practice-wise, they go to

1 (inaudible) fines and costs with the fines and fines  
2 and cost clerk a review date, and there was no  
3 hearing at that point in time.

4 Q. So the practice was not to conduct an  
5 ability to pay then for individuals who had been  
6 released from incarceration and on whom these fines,  
7 fees, and costs had been imposed; is that right?

8 A. No, we did not conduct those, no.

9 Q. And nobody else in the courthouse conducted  
10 those?

11 A. Not that I'm not aware of, but I can't  
12 speak for everyone, so -- as to mine, I did -- they  
13 went to the fines and cost clerk.

14 THE COURT REPORTER: Excuse me one second.  
15 Did someone object just a second ago? It was real  
16 quiet. Maybe it wasn't anything.

17 MR. ESSER: I did not.

18 THE COURT REPORTER: Thank you.

19 MR. WILLIFORD: I did not either, so --

20 MR. PEDERSON: I didn't either, Susan.

21 THE COURT REPORTER: Okay.

22 BY MR. FOWLER:

23 Q. Mr. DeLapp, I want to ask you more about  
24 these meetings with the cost administrator. Did  
25 those meetings happen to both of the defendants who

1 were sentenced to incarceration as well as those  
2 defendants who were not sentenced to incarceration?

3 A. Them meeting with the fines and cost clerk?

4 Q. Correct.

5 A. Yes, they would go down and meet with the  
6 fines and cost clerk.

7 Q. So for the individuals who were released at  
8 sentencing, meaning not sentenced to incarceration,  
9 how long after sentencing would they meet with the  
10 cost administrator?

11 A. Like I said, they were given a slip by the  
12 court clerk's office that was prepared by the clerk's  
13 office with a (inaudible). Typically they would come  
14 down -- go down that day if they could or within the  
15 next couple of days. That was between them and the  
16 court clerk's office.

17 Q. And you had said that it would -- you were  
18 fast in preparing judgment and sentencing orders.  
19 Right?

20 A. Trying to be as fast as possible, yes.

21 Q. And that took between seven and ten days to  
22 finalize the Judgment & Sentence Order?

23 A. Typically, yeah, yeah.

24 Q. And you --

25 A. Typically --

1 Q. And you testified that Attachment A  
2 couldn't be completed until after the J&S was sent  
3 down to the clerk's office. Right?

4 A. Yeah, they had to add the numbers in, yes.

5 Q. What was the purpose of the meetings  
6 between the criminal defendants whom you had imposed  
7 fines, fees, and costs? What was the purpose of  
8 those meetings with the cost administrator?

9 A. Set the payment plan or discuss issues  
10 about payments.

11 Q. Were you present during those meetings?

12 A. No, sir.

13 Q. Were those meetings recorded?

14 A. Not that I'm aware of.

15 Q. Okay. So you said the purpose was to  
16 discuss problems or to set up an installment plan; is  
17 that right?

18 A. I -- yes.

19 Q. And in coming up with an installment plan,  
20 did you instruct the cost administrator to consider  
21 or review defendants' Affidavits of Indigency?

22 A. No.

23 Q. In creating an installment plan, did you  
24 instruct the cost administrator to take into account  
25 dependents or disability?

1 A. No.

2 Q. Did you instruct your cost administrator to  
3 tell criminal defendants that they can seek to have  
4 all their fines, fees, and costs waived after 24  
5 months of compliance, at least after November 1st of  
6 2016?

7 A. No.

8 Q. Did you instruct the cost administrator  
9 that the administrator or the clerk could waive  
10 certain fines, fees, and costs altogether?

11 A. No.

12 Q. Did you instruct the cost administrator  
13 or clerks that a criminal defendant could request to  
14 have a court-appointed attorney and would, in fact,  
15 be one appointed in certain circumstances?

16 A. For the -- for fines and costs?

17 Q. Correct.

18 A. No.

19 Q. Why did you not do that?

20 A. Just never did that. That wasn't ever part  
21 of the pra -- the practice. They had a  
22 court-appointed attorney for the case-in-chief, but  
23 I've never had anyone request or I never instructed  
24 anyone to seek one for fines and costs.

25 Q. Do you believe that criminal defendants



1 are, in fact, entitled to an attorney for fines and  
2 cost hearings in certain circumstances?

3 MR. WILLIFORD: Object to the form.

4 THE WITNESS: I don't know.

5 BY MR. FOWLER:

6 Q. What's your understanding of the caselaw  
7 about whether an individual at a fines or cost review  
8 hearing has the right to a court-appointed  
9 attorney?

10 A. I got to look at see. I'm not aware of  
11 that.

12 Q. Your understanding that a person is never  
13 entitled to an attorney, that sort of hearing? Am I  
14 getting that right?

15 A. (Inaudible). They may be entitled to it.  
16 We've just never had one do that. Were never  
17 instructed on that.

18 Q. You were never trained on that?

19 A. No.

20 Q. Mr. DeLapp, how did you learn about the  
21 installment plan that was set up by the cost  
22 administrator?

23 A. The installment plan I learned about when I  
24 was in the DA's office. Actually at that time it was  
25 done by the actual -- it was done by Judge Lansdown

1 in the courtroom. And then they got a court -- a  
2 fines and cost clerk.

3 The very first fines and cost clerk that  
4 AOC got for the clerk's office used the same form,  
5 and then they would -- they -- they would -- they  
6 would modify that over time, so -- it used to be done  
7 by the judge in the courtroom, and then they got a  
8 fines and cost clerk, and they -- that's who was --  
9 that's where they would send them to to do the fines  
10 and costs.

11 Q. When you became a judge and you sentenced a  
12 criminal defendant to fines, fees, and costs, how did  
13 you learn about what the clerk's office or the cost  
14 administrator had calculated for an installment plan?

15 A. They'd receive a payment plan, and I would  
16 review that and sign that. There was a stack of  
17 them, as a matter of fact, and so I would review  
18 those and sign those.

19 Q. I want to ask you about these payment plans  
20 and installment plans that were sent up to you in a  
21 stack.

22 A. Okay.

23 Q. When you were handed these calculations of  
24 installment plans and asked for your signature, did  
25 you know whether a defendant had fines, fees, and

1 costs in other jurisdictions?

2 A. No, I did not.

3 Q. And you didn't go back and review the  
4 Affidavits of Indigency for these individuals.  
5 Correct?

6 A. No.

7 Q. Correct? You didn't review any notes that  
8 you took about defendants' criminal history or other  
9 financial obligations. Right?

10 A. No, I did not.

11 Q. Did you ever decline to sign the  
12 installment or payment plan that was prepared by your  
13 minute clerk or cost administrator?

14 A. Occasionally -- no. Occasionally there may  
15 be some information -- additional information that  
16 needed to be put on, and I'd send it back down, and  
17 they'd fix that, and then I would sign that. But,  
18 no, in general, no. I would just sign those.

19 Q. What kind of additional information would  
20 have to be added on?

21 A. Oh, sometimes I would ask about employment  
22 or I -- sometimes I would ask -- if it was blank or  
23 if it was -- it would -- it would not say something,  
24 and occasionally once in a while I got them where  
25 they didn't have the -- they didn't have the --

1 primarily didn't have the review date on that. There  
2 a space for review date, and that would be blank, so  
3 I would say, "We need to have that put on there."

4 Q. What factors did you consider in whether to  
5 put your signature on the installment plan?

6 A. I just reviewed it to see if it was  
7 completed and would sign the installment plan.

8 Q. What factors did you consider when you were  
9 deciding whether to put your signature on the total  
10 calculation of fines, fees, and costs that were being  
11 imposed?

12 A. Well, I mean, you would just review to see  
13 if those -- those pla -- those blank -- those places  
14 were filled in with a number, and then I would sign  
15 those.

16 Q. It was essentially checking to make sure  
17 typographical errors had not been made and that math  
18 errors had not been made; is that fair?

19 A. Correct.

20 Q. When you signed off on the installment  
21 plan, were you in chambers or in the courtroom?

22 A. In chambers.

23 Q. Were the defendants whose installment plans  
24 you were signing off on in chambers with you?

25 A. No.

1 Q. Were the attorneys for the defendants whose  
2 installment plans you were signing off on in chambers  
3 with you?

4 A. No.

5 Q. When you were signing off on these  
6 installment plans, did you communicate with the  
7 defendants in any way?

8 A. .

9 MR. FOWLER: I think we've been going now  
10 for about an hour and 15 minutes, so maybe it makes  
11 sense if we break for 15 and come back at 10:45  
12 eastern, 9:45 central. Does that work for folks?

13 THE WITNESS: Sure.

14 THE VIDEOGRAPHER: We're going off the  
15 record at 0:31 a.m.

16 (Recess taken 9:31 a.m. - 9:45 a.m.)

17 THE VIDEOGRAPHER: We're back on the record  
18 at 9:45 a.m.

19 BY MR. FOWLER:

20 Q. Mr. DeLapp, your general practice was not  
21 to inquire about dependents or disability or fines,  
22 fees, and costs from other jurisdictions at  
23 sentencing. Is that fair to say?

24 A. Yes.

25 Q. And your general practice at sentencing is

1 to not inquire into ability to pay. Is that fair to  
2 say?

3 A. Yes.

4 Q. And at sentencing when you were telling  
5 criminal defendants about their fines, fees, and  
6 costs, your general practice was not to tell  
7 individuals when they could ask for community service  
8 as an alternative?

9 A. Yes.

10 Q. Your general practice was not to impose  
11 community service either. Correct?

12 A. Yes.

13 Q. I want to ask you about the -- is it fine  
14 and cost dockets? Is that the phrase you used, or  
15 fee and cost dockets?

16 A. In the cost dockets, yes.

17 Q. I want to ask you about the fines and costs  
18 docket review hearings that you did preside over.

19 A. Okay.

20 Q. Can you remind us how many of those  
21 hearings you think you presided over?

22 A. A lot, you know. They have -- from the  
23 time I took the bench in 2003 until the time I left  
24 the bench, you have those once or twice a month, you  
25 know. Then I would have also reviewed, like, fines

1 and costs with people when they came in for probation  
2 and stuff, you know -- you know, so a number of  
3 hearings, yes.

4 Q. How many people did you remand at fines and  
5 costs review hearings?

6 A. The (inaudible) -- the cases involved. I  
7 mean -- I mean, there wasn't, like, a set number of  
8 people. Sometimes it was none, sometimes it was  
9 just -- it was, you know, three or four, sometimes it  
10 was more than that.

11 Q. I want to ask you just about the review  
12 hearings for folks who were not on probation, that  
13 group of individuals who you're not holding onto, but  
14 rather the true cost review hearings. Do you  
15 understand the group that I'm talking about?

16 A. Yes.

17 Q. On a typical day, how many individuals  
18 would show up for a review hearing?

19 A. Typical day? The courtroom would be kind  
20 of full, so you would have several pages, you know,  
21 150 folk, 100 folk, something like that.

22 Q. So on a typical day of the 100 to 150  
23 criminal defendants who were in front of you, how  
24 many would you remand?

25 A. I couldn't tell you, really. I mean, you

1 know, it -- sometimes, like I said, it was none,  
2 sometimes it was three or four, sometimes it was just  
3 a matter of putting them in the jury box and giving  
4 them time to find someone to pay their fines and  
5 costs.

6 Q. Mr. DeLapp, did I hear anyone somebody  
7 speaking in the background and say, "Couldn't tell  
8 you"?

9 A. That was Mr. Esser.

10 MR. FOWLER: Mr. Esser, I'd ask that you  
11 not give your client an answer to provide during a  
12 sworn deposition.

13 MR. ESSER: Okay.

14 BY MR. FOWLER:

15 Q. Mr. DeLapp, has he done that on any other  
16 occasion?

17 A. No, that was the first time he said  
18 something.

19 BY MR. FOWLER:

20 Q. Has Mr. Esser been indicating to you  
21 outside of cameras to you how you should answer any  
22 of these questions?

23 A. No.

24 Q. Has he been passing you any notes?

25 A. No.



1 Q. Has he --

2 A. He was talking to himself just a minute  
3 ago, but, no.

4 Q. Has he been giving you a thumbs up or  
5 thumbs down indicating you should say yes or no to  
6 any question?

7 A. No.

8 Q. Okay. If you had to estimate percentage on  
9 a typical review hearing docket, what percentage of  
10 the individuals who came before you were remanded?

11 A. Less than five percent. You know, I don't  
12 know. It just depended on the -- the day and, you  
13 know, the cases.

14 Q. Okay. I want to ask you about those  
15 combined docks that you presided over, so folks whom  
16 you had sentenced to incarceration -- excuse me, folks you  
17 had sentenced to a probationary term or the youthful  
18 offender cases. Do you understand these combined  
19 cost dockets that I'm asking you about?

20 A. Yes.

21 Q. For a typical day at these combined  
22 dockets, how many people would be on the docket?

23 A. Those are typically done at the same time  
24 as maybe a formal arraignment docket or at the end of  
25 a formal arraignment docket, because typically they

1 had -- we would -- we would set them -- keep them on  
2 the dates, not put them on the fines and cost docket,  
3 keep them on the dates. I don't know. Oh, sometimes  
4 20, 25 folk probably -- I don't know -- something  
5 like that.

6 Q. When a criminal defendant showed up for a  
7 combined probation review and cost review hearing --

8 A. Uh-huh.

9 Q. -- for those individuals whom you remanded,  
10 were you revoking their community status as part of  
11 their probation, or were you converting the fines and  
12 fees part of their sentence into a jail sentence, or  
13 were you doing something else?

14 A. Sometimes they were -- if they were on a  
15 community sentencing or -- they might be sanctioned  
16 to so many days in jail; sometimes it was just the  
17 converting saying that they were behind, determining  
18 how far behind they were and remanding them for a  
19 certain amount to be served out with a review date.  
20 Sometimes it was a combination.

21 Q. So some of the time you were converting the  
22 fines, fees, and costs part of their sentence into a  
23 jail sentence: Is that right?

24 A. Correct.

25 Q. For some of the individuals whom you

1 remanded at these combined hearings, you were  
2 temporarily revoking their community status; is that  
3 right?

4 A. Yes, they had sanctions that were being  
5 imposed, yes. Sometimes -- yes. That's correct.

6 Q. And you said, "or it could be something  
7 else." What is the something else that it could have  
8 been?

9 A. Well, sometimes they were -- there was a  
10 partial revocation. For example, the District  
11 Attorney's office, it wasn't a sanction imposed by  
12 the courts, but the courts with the DA's office has  
13 asked, "Judge, we want to revoke 30 days of their  
14 sentence," then I may also give them -- do a fines  
15 and cost where they're getting credit at the same  
16 time, you know, so they're going to sit out time;  
17 they're going to get credit for that time towards the  
18 fines and costs. That may have -- that -- that may  
19 be a -- hap -- that happened as well.

20 Q. And these partial revocations or sanctions  
21 or conversions of fines, fees, and costs to a jail  
22 sentence, all of these things would happen to  
23 individuals whose only violation was not paying  
24 fines, fees, and costs. Correct?

25 A. No. The only ones that would be not paying

1 fines, fees, and costs would be the ones remanded for  
2 fines and costs. I mean, usually the sanctions and  
3 the revocations were either for new crimes, violating  
4 some probation, testing positive, failing to report  
5 to their probation officer.

6 So only the ones that were -- that truly  
7 fines and costs, if they showed up and they -- it's  
8 been two months, since their, you know, last review  
9 and they failed to pay the \$50.00 a month, and we  
10 inquired why they didn't pay those, they might be  
11 remanded for what -- that amount, and then they would  
12 be remanded to serve that or to pay that to be  
13 released.

14 Q. So for the only individuals whose only  
15 violation was not paying fines, fees, and costs, your  
16 exclusive course of action was converting the fines,  
17 fees, and costs part of their sentence into an  
18 incarceration sentence?

19 A. Well, they would -- some of them could be  
20 remanded, some of them were not remanded, and some of  
21 them were given opportunities to get get money, to  
22 find money, come back with money, but if the -- if  
23 they were to the point where they were able to pay  
24 and just hadn't paid and there was something -- you  
25 know, then we would -- we would -- I would remand

1 them, yes.

2 Q. so for the cost review hearings and the  
3 cost review portion of the combined hearings --

4 A. Uh-huh.

5 Q. -- what was your typical set of questions  
6 that you would ask folks?

7 A. The way that they were still -- I would  
8 know -- typically, sometimes the clerk's office would  
9 write on there how much they were behind, or I would  
10 ask them to calculate how much they were behind. I  
11 have a copy -- you can look up their fines and costs  
12 payment plan on the computer. I would ask them if  
13 they're still employed and ask them, you know, what  
14 their status was, why they haven't paid.

15 And if they were not -- unable to have a  
16 reason why they didn't pay, then they were -- that's  
17 when they would made a determination of how much they  
18 were behind and remand them or ask them if they come  
19 up -- come up with a payment or if they call somebody  
20 then or those kind of -- those kind of questions, you  
21 know, have them sit in the jury box.

22 If you can call someone -- typically a lot  
23 of them came with people, and somebody would go get  
24 money and pay, or I'd say, "How much you can pay  
25 today towards this?" So it just depended on, you

1 know, the circumstances of that particular person,  
2 but those are type -- that was the type of questions  
3 that I would ask.

4 Q. You didn't ask criminal defendants who  
5 showed up in front of you at review hearings whether  
6 they had fines, fees, and costs from other  
7 jurisdictions. Correct?

8 A. No, I did not.

9 Q. You didn't ask criminal defendants who came  
10 before you about their child support obligations.  
11 Correct?

12 A. No. Some of them I knew because they were  
13 also in jail -- some of them were also in jail on  
14 child support. That was done by a different judge,  
15 but I would be -- I would know that they were in --  
16 they were in child support, or if I looked them up on  
17 a -- the computer, I might notice they have a child  
18 support. But not typically, no, I did not ask that  
19 unless I was -- it was something I already knew  
20 about.

21 Q. You didn't ask criminal defendants who came  
22 in front of you at these review dockets about their  
23 dependents?

24 A. Not -- not really. Some of them I knew --  
25 I know their dependents, and some I would -- I would

1 talk to them about it, but not -- not as a general  
2 practice, no.

3 Q. So as a general practice, unless you knew  
4 about an issue from outside, your role as a judicial  
5 officer or you knew more information from a prior  
6 court hearing, you wouldn't ask about these topics we  
7 just addressed?

8 A. No. I mean, I might get a report -- I  
9 mean, well, I -- strike that.

10 But I usually got a report from DOC, the  
11 probation parole office that might have some  
12 information there, but that's -- that was only on the  
13 ones that -- you know, that were for some kind of  
14 reviewing their probation as well, or if the -- Jan  
15 Willaford was there from community sentencing, which  
16 she was, she would give me an update of certain  
17 things going on in their life, and then she was also  
18 the one that might recommend sanctions if there was a  
19 deal.

20 But the fines and cost people, no, I would  
21 not ask those things, those things you just talked  
22 about.

23 Q. For the kinds -- fines and cost people, as  
24 a general practice, you didn't ask about physical or  
25 mental disabilities either. Right?

1 A. No.

2 Q. At those cost docket hearings, did you ever  
3 relieve a criminal defendant completely of their  
4 costs?

5 A. Very rarely. Sometimes I would -- oh,  
6 well, in total? No. I would sometimes reduce that  
7 or reduce those things and tell the clerks to reduce  
8 it, but not in total, no --

9 Q. Why not --

10 A. -- that I can -- that I can recall.

11 Q. Why not, Mr. DeLapp?

12 A. Because I believe that's part of the  
13 criminal case. I mean, that's -- you have -- there's  
14 a reason you have fines and costs in addition to jail  
15 time. I mean, it's (inaudible) that the legislature  
16 put it in this -- in the statute, so --

17 Q. Say that last part again.

18 A. That's what this legislature put into the  
19 statute to say each crime carries fines and costs,  
20 the DA's office make a recommendation that's accepted  
21 by the defendant typically, and then I follow the  
22 recommendation unless -- there were times where I  
23 deviated from the re -- the recommendation at the  
24 time of sentencing.

25 But typically I followed the



1 recommendation, and that's part of the punishment of  
2 the criminal case, is the fines and -- the fines and  
3 costs, in my opinion, so --

4 Q. When you were a judge, did you believe you  
5 had the authority to completely relieve a defendant  
6 of costs?

7 A. Of costs? No. I mean, I knew I could  
8 reduce them by reduc -- if I reduced the cost of jail  
9 incarceration fees -- for example, if I reduced a  
10 jail incarceration fee by 90 percent, I had to  
11 reduce -- I had -- I had to reduce the fines and  
12 costs by the same percentage. That's the way the  
13 statute was written for the jail incarceration  
14 fees.

15 Q. As a judge, did you believe you had the  
16 authority to completely relieve a person of fines and  
17 fees?

18 A. I mean, could I -- could I say I'm going to  
19 strike the fines and costs out of a case? I believe  
20 I could do -- could have done that, yes. I mean,  
21 I -- I didn't do that, but ul -- but I believe you  
22 could do that. You could say, "I'm just going to" --  
23 I would do sometimes no fine.

24 You know, I believe there was a minimum  
25 victim compensation assessment, again, set by the

1 legislature, which goes to the victim crime --  
2 victim's fine that's required. There were a  
3 minimum -- there was a number of fine -- fees and  
4 things that were assigned to a criminal case. I  
5 think it's -- it went from beginning of, like, 19  
6 over to 30, I think, before I left.

7 Almost every year there was things added to  
8 that, which were -- you know, if you were a criminal  
9 defendant and if you were found to be guilty, you had  
10 to pay these fees along with the costs.

11 Typically, the costs in a case, the actual  
12 court costs, weren't that much money, but most -- a  
13 lot of that was a lot of -- was the -- was the -- the  
14 mandatory fees put on there by the legislature, so  
15 those I did not typically ever re -- reduce or get  
16 rid of.

17 Q. I want to be clear. Do you believe that  
18 you had the authority to completely relieve a  
19 criminal defendant of fines?

20 A. Of fines, yes.

21 Q. Do you believe you had the authority to  
22 completely relieve a criminal defendant of fees?

23 A. No, I didn't believe that. I believed that  
24 those things were put in there to be collected. I  
25 mean, when you say there's a minimum -- for example,

1 a minimum VCA is \$50.00, but that -- that's kind of  
2 what you -- I think you had to impose, so --

3 Q. Did you believe you had the authority to  
4 completely relieve a criminal defendant of costs?

5 A. No.

6 Q. At these hearings when you were considering  
7 remanding a criminal defendant, did you ever tell a  
8 criminal defendant that they could request  
9 court-appointed counsel to help him fight against  
10 incarceration?

11 A. No.

12 Q. Did you ever tell a criminal defendant that  
13 they actually did have the right to court-appointed  
14 counsel if you were considering incarcerating them  
15 for failure to pay in certain circumstances?

16 A. No.

17 Q. What was the minimum payment that you  
18 imposed on criminal defendants?

19 A. Per -- like, on a payment plan?

20 Q. Correct.

21 A. The cost administrator would do that  
22 minimum -- stuff. I -- I would would depend on --  
23 I've done minimums of \$10.00 to \$25.00 to \$50.00. It  
24 depends on the -- the person involved. Some people  
25 want to get it paid faster, some people want to send

1 up -- set up a, you know, \$10.00 debt (phonetic) fee,  
2 then that, you know, stretches it out, you know. So  
3 I've did -- I've done different things.

4 Q. Do you have a mandatory minimum for the  
5 total of fines, fees, and costs that you would impose  
6 on somebody?

7 A. A mandatory minimum? Not that I'm aware  
8 of. There was no -- never any discussion about  
9 mandatory minimum. There was discussions about where  
10 to start and then deviate from the start, I guess.

11 Q. So Judge Sigler --

12 A. Typically they wanted, like, \$50.00 or  
13 \$70.00 a month to try and get it paid, but then they  
14 would -- there -- they could -- you know, this person  
15 I was -- may change that or I may change that if they  
16 came into fines and costs and something had changed,  
17 can you reduce it down? Yes, I'm going to reduce it  
18 down, make it \$25.00 a month, make it \$10.00 a month.  
19 You know, some people, you know, could only pay  
20 that mu -- that amount.

21 Q. So Judge Sigler testified that you had an  
22 unwritten rule. He testified on October 25th that  
23 you had a mandatory minimum of \$75.00. What  
24 conversations did you have with Judge Sigler about  
25 a mandatory minimum payment of \$75.00 or an unwritten

1 rule in the Washington County courthouse?

2 A. Danna Forbes of the court -- I think it was  
3 Danna Forbes of the court administrative office asked  
4 one day, "What would be a good minimum to start  
5 with?" I thought \$75.00 was a good minimum to start  
6 with. That I said -- I said, "That sounds like a  
7 reasonable thing of \$75.00," and then we could  
8 deviate from that.

9 So I'm not sure I had a min -- a -- a  
10 unwritten rule. I mean, I had a discussion with the  
11 fines and cost clerk that we would do -- start with  
12 \$75.00 a month. I mean, that was their question to  
13 me. I said, "That's fine," you know, and then  
14 obviously they set up whatever they set up. But,  
15 yeah, \$75.00 was kind of what the -- what -- what  
16 they looked, as I said awhile ago, \$75.00, fifty --

17 Q. Let me you ask my --

18 A. -- to sixty --

19 Q. Let me ask you my question again. What  
20 conversations with Judge Sigler did you have about a  
21 mandatory minimum of \$75.00?

22 A. I may have talked to him about -- that's  
23 what the clerk's office talked about when he took  
24 over the fines and costs that may -- yeah, I -- I  
25 don't re -- recall an actual conversation, but I

1 probably did have a conversation with him when  
2 he took over. I don't know what Judge Gerkin --  
3 maybe that was what Judge Gerkin was doing as well.  
4 I don't remember. It's been too long ago.

5 Q. So I want to be clear. The clerks didn't  
6 tell you \$75.00 was a good idea. Correct?

7 A. No, they asked me.

8 Q. The clerks asked --

9 A. They asked --

10 Q. They asked you as the district judge, "What  
11 is a reasonable mandatory minimum?"

12 A. "What is a reasonable minimum to start --  
13 to look at," yes, and -- yeah.

14 Q. And you told the clerks and Judge Sigler  
15 that \$75.00 was a minimum --

16 A. I said that was a reasonable amount, I  
17 thought.

18 Q. Why did you think that was reasonable?

19 A. Well, most of them typically have a lot of  
20 money to pay, so we're trying to pay \$75.00 a month.  
21 I thought, you know, if they could pay \$75.00 a month  
22 and maybe compare that to maybe a cell phone bill or  
23 something like that, that would be a reasonable  
24 amount to pay if they could pay that, and if not,  
25 then we would re -- we would adjust it.

1           So that's where I was thinking about a  
2 comparison. And the clerk's office, I said, were  
3 asking about that. I said, "Hey, that sounds like  
4 the right place to -- starting place; I guess you  
5 have to have a starting place." So that's where we  
6 started it at.

7           Q. Well, did you do a calculation of the  
8 average salary of folks in Washington County when you  
9 were telling your cost administrator that \$75.00 is a  
10 good minimum?

11          A. No.

12          Q. Did you do a calculation of the average  
13 salary of the criminal defendants who appeared in  
14 front of you?

15          A. No.

16          Q. On average, what percentage of the criminal  
17 defendants who appeared in front of you were  
18 employed?

19          A. I don't know. I couldn't tell you.

20          Q. Well, it appeared the cost administrator  
21 filled out that part of the form. Correct?

22          A. Exactly.

23          Q. So why can't you tell us?

24          A. Because I never seen them do a calculation  
25 on that.

1 Q. Do you know if your successors on the bench  
2 abolished your unwritten rule of \$75.00 as a  
3 minimum?

4 A. Probably so.

5 Q. Have you talked with your successors about  
6 their views of \$75.00 as a mandatory minimum?

7 A. No, no, sir.

8 Q. You've actually appeared in front of your  
9 former colleagues now as an attorney in front of them  
10 as judges. Right?

11 A. Correct.

12 Q. So does it look like your successors  
13 abolished your former unwritten rule of \$75.00?

14 A. I have no idea.

15 Q. You've had clients who've had fines, fees,  
16 and costs imposed on them?

17 A. Yes. And they ask the same question about,  
18 "What's your ability to pay and how much do you want  
19 to start," and so they've done that, yes. And then,  
20 you know, again, my -- the \$75.00 was a place to  
21 start and to -- and then to -- to modify upon the  
22 basis of, you know, the person.

23 Q. I'm asking you, does it seem like there's  
24 still an unwritten rule of \$75.00 as a minimum or a  
25 place to start in the Washington County Courthouse?



1 A. No, I don't think there is.

2 Q. You never asked the question, "Are you able  
3 to pay," at fines, fees, and cost hearings. Right?

4 A. At the review hearings?

5 Q. Correct.

6 A. Well, that was the purpose of -- whether  
7 they were able -- if they haven't paid, why they  
8 haven't paid; "Are you able to pay" -- you know, "Are  
9 you able to pay today," you know, so, yes, I did ask  
10 that question.

11 Q. These topics that we just talked about  
12 related to fines, fees, and costs, did these policies  
13 and practices change during your time as an associate  
14 district judge or full district judge?

15 A. Well, the fines and costs were changing  
16 quite a bit the amounts of what was being fees and  
17 what all. Now, the policies -- like I said, when I  
18 was associate district judge, I kind of fol -- I  
19 would just kind of follow what was -- what was done  
20 because Gerkin did his own thing. I would talk about  
21 my cases I -- I -- I did.

22 I'm not really sure if I can answer -- you  
23 have a specific time? There were times where things  
24 did change as far as, like I said, the mentioning of  
25 when we get a new fines and cost -- or mentioning of

1 the -- the -- where to start at, the minimum. I  
2 think that was Danna Forbes. She was the first fines  
3 and cost clerk.

4 But -- so some some of these things did  
5 change a little bit as we went through that period of  
6 time, yes.

7 Q. Prior to you being on the bench, did  
8 anybody at the courthouse indicate that the policies  
9 and practices of the Washington County Courthouse  
10 would or should be changed?

11 A. No.

12 Q. Did anybody at the courthouse encourage you  
13 to change your practices on fines, fees, and costs?

14 A. No, not that I recall.

15 Q. Did anybody at the courthouse ever  
16 encourage you to change your practices at cost review  
17 hearings?

18 A. Not that I recall.

19 Q. Anybody at the courthouse encourage you to  
20 change your use of the contempt power of the court?

21 A. No.

22 Q. You do know that Washington County has  
23 changed its practices on these subjects. Right?

24 A. Yes.

25 Q. So you do know that your former colleagues

1 have rehailed in some ways how fines, fees, and costs  
2 are handled at the courthouse. Right?

3 A. I believe, yeah. I won't speculate on why,  
4 but I believe they have, yes.

5 Q. Judge Sigler testified on October 25th that  
6 what happened on your watch needed to be fixed and  
7 changed.

8 Do you believe that your practices needed  
9 to be fixed or changed?

10 A. Think it would be in -- think it would be  
11 in -- fixing in regard to maybe pay -- or  
12 getting more -- not relying so much on the AOC to do  
13 stuff, yes.

14 Q. So tell me specifically what you think  
15 could have been fixed or changed under your watch  
16 based on your over-reliance on the Administrative  
17 Office of the Courts?

18 A. Well, like I say, I was unaware of certain  
19 statutes that were passed that I would find out  
20 about. So in regards specifically to people getting  
21 released from incarceration, giving them -- giving  
22 them 180 days to report -- I think it was 180 days to  
23 report -- to the court clerk's office. We were doing  
24 72 hours upon their release, I believe.

25 Q. What else do you think should have been

1 fixed or changed under your watch?

2 A. Nothing.

3 Q. That was your only mistake, the 180-day  
4 statute that you were unaware of?

5 A. I didn't -- I didn't say that was my only  
6 mistake, but that was -- you asked me a  
7 specific question about what else would I change, and  
8 I -- at that time I -- you know, there's nothing that  
9 I think of that should have been changed.

10 Q. What other mistakes did you make in  
11 relation to fines, fees, and costs while you were on  
12 the bench?

13 A. Well, as I said, probably could have paid  
14 more attention to the one statute, I think your  
15 Exhibit A -- I mean -- or -- or -- of waiving stuff  
16 or reducing the jail incarceration fees. I should  
17 have -- I should have reduced more jail incarceration  
18 fees and, thus, also used reduced fines and costs,  
19 you know. So I look back now. There's a lot of  
20 money for some of the -- that's owed on those that  
21 could have been reduced.

22 Q. I heard you say three things: You should  
23 have paid more attention to the statute --

24 A. Yes.

25 Q. -- that I showed you as Exhibit A; is that

1 correct?

2 A. Right.

3 Q. The second was you believed you should have  
4 reduced the jail incarceration costs that were  
5 imposed; is that correct?

6 A. Should have done that, yes.

7 Q. And the third is that you believe you  
8 should have reduced the fines, fees, and costs that  
9 were imposed on those?

10 A. Yeah, because if you can reduce the jail  
11 and incarceration fees, you're required to reduce the  
12 fines and costs along with it, yes.

13 Q. Why do you refer to that as a mistake, not  
14 reducing the jail or incarceration costs?

15 A. Can't say it was a mistake, it's just  
16 something I wish I had done. I mean, I -- I've --  
17 you know, that was -- that was something that could  
18 have been done to review some of those. I mean, it  
19 seemed like -- it seemed like a lot of money  
20 sometimes for people that were unable to get out of  
21 jail.

22 Q. What do you mean when you say, it seemed  
23 like a lot of money sometimes for people to get out  
24 of jail?

25 A. Well, sometimes people are there for, like,

1 300 days. I mean, they can't post bond, and then  
2 your jail sends over a thing for \$38.00 a day times  
3 100 days; that's \$3,800. This is for 100 days. It's  
4 not unusual for people to be there that long.

5 So when they get, you know, jail  
6 incarceration fees sometimes that are in excess of  
7 \$5,000 or more, you know, that -- you know, that's  
8 what the statute was. I wasn't involved in passing  
9 the statute, but I should have -- should have taken  
10 the opportunity to reduce those, I guess, more.

11 Q. How would you have determined how you would  
12 reduce that? If you were a judge today, how would  
13 you make the decision to reduce the jail  
14 incarceration fee and then correlate its fines, fees,  
15 and costs?

16 A. Well, I would look at what they owe and  
17 determine what their total amount is and see if  
18 there's some way to reduce that to something that  
19 could be -- you know, ask -- you know, find out where  
20 they're working and stuff like that, so -- I did not  
21 do that.

22 Q. Would you ask folks about whether they have  
23 a mental or physical disability if you were a judge  
24 today?

25 A. In regard to reducing?

1 Q. Correct.

2 A. I could ask those questions, yes.

3 Q. If you were a judge today and you were  
4 trying to correct your mistake of jail incarceration  
5 costs, would you ask about the number of dependents  
6 that criminal defendants have?

7 A. Possibly, yes.

8 Q. If you were a judge today trying to fix  
9 your mistakes related to jail incarceration, would  
10 you ask criminal defendants about their fines, fees,  
11 and costs that were coming from other jurisdictions  
12 outside of Washington County?

13 A. Yeah, I would do that. Again, I'm not -- I  
14 would do that, yes.

15 Q. If you were trying to fix your mistakes  
16 related to the jail incarceration costs, what other  
17 questions would you ask criminal defendants when you  
18 were trying to figure out an amount that seemed  
19 reasonable to you as a judicial officer?

20 A. What they're -- where they're working at,  
21 how much maybe they're making; what other costs  
22 they're paying; are they still paying a DA  
23 supervision fee; are they still paying restitution;  
24 are they paying probation fees; are they paying --  
25 you know, there's a whole lot of other fees that are

1 collected in-county that they pay.

2 I have some that were -- you know, they may  
3 have restitution, a lot of money, and that may be  
4 better spent, in my opinion, better spent -- their  
5 money better spent, vic -- pay victims back or pay  
6 those other expenses than paying the jail  
7 incarceration fees.

8 Q. And you didn't ask these questions on the  
9 subjects, you were just speaking on when you were  
10 imposing fines, fees, and costs or incarceration fees  
11 on criminal defendants who appeared in front of you;  
12 is that right?

13 A. Well, sometimes I would ask those  
14 questions, but -- you know, and I -- I would also be  
15 aware when someone was sentenced that they would be  
16 paying a -- for example, if they were entering into  
17 drug court, they would be paying UA fees and program  
18 fees. I knew that amount was coming in as well,  
19 so --

20 Q. So what -- what were the circumstances  
21 where you would ask a question about employment and  
22 the circumstances when you would not ask a question  
23 about employment?

24 A. Oh, it would come up where you're, like,  
25 where are you working at? It was just -- it was a



1 kind of a case-by-case basis on the -- on the -- you  
2 know, if -- for example, people that were on -- doing  
3 a lot of programs, a lot of stuff, you know -- you  
4 know, if it seemed like there was going to be a lot  
5 of stuff, make sure that they're -- you know, have  
6 some way to pay the -- pay the fines and costs.

7 Q. You said that you also think it was been a  
8 mistake, the corresponding fines, fees, and costs  
9 that were titled -- tied to the jail incarceration  
10 costs. What do you mean by that, that they were tied  
11 to the jail incarceration costs?

12 A. Well, the statute says, if I believe  
13 correctly, that if you reduce the jail incarceration  
14 costs by whatever percentage, you have to reduce the  
15 fines and fees, and costs by the same percentage. So  
16 that's what I mean by they're tied together.

17 So in other words, there was, in my  
18 opinion, a discouragement to reduce those jail  
19 incarceration fees because then you had to reduce the  
20 fines, costs and those things. So I think that  
21 discourages that reduction because there's a reason,  
22 and you'll have to ask the authors or the lobbyists  
23 involved why that was connected.

24 But as a judge, you're, like, okay, if I'm  
25 going to reduce that, you know, then you're kind of

1 discouraged to reduce the fines and fees which are  
2 going -- that are collected.

3 Q. Why did that discourage you, Mr. DeLapp,  
4 from reducing --

5 A. Because you have fees that are being paid  
6 to agencies that -- out of each case. So, like I  
7 said, you're paying -- you're -- fees that are paid  
8 for as -- you'd have to reduce the victim  
9 compensation assessment in a case, so the victim  
10 compensation board would lose money.

11 You'd have to reduce the fees of the  
12 different funds. There's trauma fund and all those  
13 things that are collected as part of that. Those  
14 would be reduced by the same percentage.

15 Q. And that was top of mind for you, not the  
16 criminal defendants' ability to pay?

17 A. I wouldn't say that, but I did -- that was  
18 something I considered, yes.

19 Q. Well, do you believe that you remanded some  
20 individuals who were just truly unable to pay the  
21 thousands of dollars that you had imposed on them?

22 A. I had people that would tell me that they  
23 just wanted to sit it out. So I guess to answer your  
24 question, no, I don't -- yes, I believe there were  
25 some people who just wanted to sit out their fines

1 and costs. They weren't going to be able to pay.

2 Q. But that's not the question I was asking.  
3 Do you believe that you remanded people to the jail  
4 who were truly unable to pay their fines, fees, and  
5 costs?

6 A. No.

7 Q. And what do you mean by that?

8 A. I think they can pay on -- they could pay  
9 something.

10 Q. What were the situations that came up when  
11 people told you, "I just want to sit it out"? What  
12 number were you suggesting imposing on them?

13 A. They just wanted to sit out all their fines  
14 and costs. They just wanted to sit them out. So,  
15 you know, I would -- you know, that didn't happen  
16 very often. I'm just try -- you know, but it did  
17 happen some where people just wanted to sit it out.  
18 I didn't -- I didn't think that was a good idea, but  
19 some people want to sit it out.

20 Q. What was the longest time that you had  
21 somebody, quote, sit it out, end quote?

22 A. I don't know. I couldn't tell you that.

23 Q. Longer than a month?

24 A. Probably.

25 Q. Longer than six months?

1           A.     Maybe. I don't know. I can't tell you. I  
2 don't know.

3           Q.     For the person whom you said was sitting it  
4 out for over a month, did you bring that person back  
5 periodically and ask or suggest alternatives to  
6 sitting in jail?

7           A.     I always suggested alternatives, like  
8 making a payment or doing those kind of things. And  
9 typically, they did have -- they were still sitting  
10 on the fines and costs review docket, yes. So -- and  
11 typically -- typically some of them were released  
12 from jail.

13                   When I would remand some people, I would  
14 release them from jail the next time, give them  
15 credit, give them -- get them a new payment plan and  
16 you know, so --

17           Q.     The -- the person who you had sitted out  
18 for over a month, did you offer community service to  
19 that individual?

20           A.     Sometimes.

21           Q.     I'm not asking sometimes. I'm asking about  
22 that individual whom you had sitted out for over a  
23 month, did you offer that criminal defendant  
24 community service?

25           A.     Yes.

1 Q. What's his name or her name?

2 A. I can't remember her -- his or her name.

3 Q. What do you --

4 A. I remember off -- I remember offering that  
5 to -- that -- the person in my mind, but I don't know  
6 that person's name. I'd have no idea.

7 Q. What did that person look like?

8 A. It was a man, it was a male.

9 Q. What was the race of that person?

10 A. White male.

11 Q. What was that person charged with?

12 A. Don't recall, probably had a number of  
13 charges and probably had a lot of fines and costs,  
14 but I don't recall.

15 Q. Is it fair to say you don't really  
16 recall -- recall what you did with that man outside  
17 of remanding to sit it out for over a month?

18 A. That's correct.

19 Q. When you became district judge in 2007, was  
20 there any judge more senior than you in terms of  
21 responsibility in the courthouse?

22 A. Yes, it was a district judge that was --  
23 oh, wait a minute. In 2007, no.

24 Q. You were senior to the elected associate  
25 district judge?

1 A. Yes, I believe -- might have came on the  
2 bench at the same time in 2007 when I had been there  
3 as an associate. He took my spot -- my associate  
4 spot when I went 2007.

5 Q. The Oklahoma Constitution made it your  
6 responsibility as the district judge to select any  
7 special judge in Washington County. Right?

8 A. Yes.

9 Q. What types of hearings can special judges  
10 handle?

11 A. There is a statute -- I believe you have  
12 the statute there of what their jurisdiction is. I  
13 don't have it in front of me, but there is a statute  
14 there.

15 Q. I'm going to pull up Exhibit B. Can you  
16 see --

17 A. Yes.

18 Q. -- page 123, Jurisdiction of Special  
19 Judges, appearing in front of you?

20 A. Yes, sir.

21 Q. And this appears to be a fair and accurate  
22 copy of the statute that relates to the jurisdiction  
23 of special judges in Oklahoma?

24 A. Yes, sir.

25 Q. You've had the opportunity to review this

1 document --

2 A. Yes, sir --

3 Q. -- prior to this deposition?

4 A. Yes, sir.

5 Q. Mr. DeLapp, could you identify for me the  
6 authority that provides for a special judge to  
7 preside over a cost review hearing?

8 A. Can you go to the next page? I thought  
9 there was a -- any post-judgment collection matter  
10 regardless of the amount of judgment in paragraph  
11 number 12.

12 Q. You believe that that relates to fines,  
13 fees, and costs from a criminal case?

14 A. Yes. Those are post-judgment -- those are  
15 post-judgment amounts, yes.

16 Q. I'm going to stop sharing my screen. So  
17 it's your understanding that special judges can  
18 preside over fines, fees, and cost review hearings?

19 A. Yes.

20 Q. In your role as district judge, did you  
21 choose Jared Sigler as a special judge for Washington  
22 County?

23 A. Yes, I did, but I also had to get the other  
24 district judges -- the way it works, get the other  
25 district judges to inform them and get their consent

1 as well.

2 Q. When you say "other district judges," do  
3 you mean the associate district judge in Washington  
4 County --

5 A. I mean, all the district judges in our  
6 judicial district, the northeast judicial district.  
7 When there is a hiring of a special judge, there is  
8 communication with the other district judges in our  
9 northeastern administrative district to inform them  
10 who they're going to pay -- who you're getting them  
11 to sign off on the order that appoints him, which is  
12 filed with the AOC.

13 Q. It's ultimately your decision as district  
14 judge -- or it was your decision to hire Jared  
15 Sigler. Right?

16 A. Yes, yes.

17 Q. When did you make that decision?

18 A. After Judge Gerkin retired. I couldn't  
19 tell you when. I don't know when he started. I'm  
20 sorry.

21 Q. When did Judge Sigler join the bench as a  
22 special judge, not when you selected him?

23 A. Again, I don't -- I don't know those dates.  
24 I mean, I don't remember.

25 Q. Could you have fired a special judge? Was



1 that your decision, to fire a special judge whom you  
2 had hired?

3 A. Again, we'd have to -- if you wanted to  
4 terminate a special judge, then you talk to all the  
5 other presiding and all the other district judges in  
6 the northeastern district, and then they could agree  
7 to that or not agree to that.

8 I know there -- I never had that happen  
9 here. I know of instances where they have been --  
10 special judges have been terminated, and there's an  
11 agreement with the -- from the other district judges,  
12 and there's been times where district -- special  
13 judges have been moved to be terminated, and there  
14 was not an agreement to terminate that person.

15 Q. Where does that requirement of consultation  
16 with other judges in the district come from?

17 A. I believe it's under the court rule -- I  
18 mean, under the Title 20 somewhere. I don't know.  
19 It's been a lot of time since I've seen that, but  
20 that is the procedure that is in place. I don't  
21 know -- I think it's -- it's statutory, I think, in  
22 Title 20, I believe.

23 Q. You were district judge when -- for a  
24 portion of time when Special Judge Gerkin was serving  
25 on the bench. Right?

1 A. I was -- yes.

2 Q. When --

3 A. I'm not real sure what -- when -- what date  
4 he retired. I can't -- I don't know that.

5 Q. Did you ever talk with Special Judge Gerkin  
6 about your practices or general practices at  
7 sentencing hearings?

8 A. Yeah. I mean, I would talk to him about,  
9 oh, what -- yes, I would talk about what we did at  
10 sentencing hearings, and he would ask questions, and  
11 I -- we would talk about certain things, yes.

12 Q. What did you discuss with Special Judge  
13 Gerkin about the imposition of fines, fees, and costs  
14 at sentencing?

15 A. I don't recall.

16 Q. Do you recall --

17 A. I may have -- I may have -- there may be --  
18 I typed up something that was given to him and  
19 Judge -- the other judges, you know, of what the  
20 practices were. I'd give it to -- may have given  
21 that to him and discussed that with him, but I don't  
22 recall that specifically.

23 Q. Did you ever talk with Special Judge Sigler  
24 about how to handle sentencings?

25 A. Sentencings? We would talk about that. I

1 mean, he was there appeared would observe those -- he  
2 was there and observed those things. I'm sure we had  
3 discussions about sentencings in cases, yes.

4 Q. When you say he was there, he observed  
5 things, you mean that Special Judge Sigler came to  
6 your courtroom and watched your practices in  
7 conducting sentencing hearings?

8 A. Yeah, he was assistant attorney, and he was  
9 there at sentencing, yes, and saw what I did.

10 Q. When he became a judge, did he observe your  
11 practices in sentencing?

12 A. Not that I recall.

13 Q. Did you have a conversation with Special  
14 Judge Sigler about how to handle the imposition of  
15 fines, fees, and costs at sentencings?

16 A. Probably did. I mean, probably did about,  
17 again, about -- I think I had typed up a thing about  
18 what we did on at different stages in a criminal case  
19 and what the practice was that we've done in  
20 practice, yes.

21 Q. Did you talk with Justice Judge Sigler  
22 about how to conduct cost review hearings?

23 A. Probably. I probably talked to him about  
24 that , Yes.

25 Q. What did you tell Judge Sigler about how to

1 conduct cost review hearings?

2 A. That what I did was -- they came in, and,  
3 you know, we looked at the -- the clerk's office  
4 would look up, or we'd look up the amount that was  
5 owed, and then see what they were paid, and if they  
6 needed to discuss with them, and the process of  
7 remanding them, I guess. That's what --

8 Q. What did you tell Special Judge Sigler that  
9 he should be asking at cost review hearings?

10 A. I don't recall.

11 Q. Did you tell him anything what he should be  
12 asking at cost review hearings?

13 A. Not that I recall, I mean, other than, you  
14 know, find out about if their ability to pay, I  
15 guess, and whatever that meant, so --

16 Q. Your testimony is that you told Special  
17 Judge Sigler he should ask about criminal defendants'  
18 ability to pay? That's your testimony?

19 A. Well, that's -- that's a fines and costs  
20 deal. I mean, I -- I -- that's on the -- that's on  
21 the order, I guess. I don't think I had a specific  
22 discussion with him, no, no, about that, no.

23 Q. You never talked with Special Judge Sigler  
24 and told him you should be asking these questions  
25 about ability to pay?

1 A. Not that I recall, no.

2 Q. So what training did Special Judge Sigler  
3 get when he joined the bench and you assigned him to  
4 cost review hearings?

5 A. He went to the new judge orientation that  
6 was put on by the Administrative Office of the  
7 Courts.

8 Q. And what did that training cover?

9 A. Oh, pardon me. I'm sorry. What was the  
10 question?

11 Q. What training did the AOC cover related to  
12 fines, fees, and costs or review hearings?

13 A. I don't know. I wasn't present for that.  
14 You'd have to ask them or Judge Sigler.

15 Q. How about Special Judge Gerkin? Did you  
16 ever provide him any training about how to conduct  
17 provide cost review hearings?

18 A. No, not that I recall. He was --

19 Q. Did you ever talk with Special Judge Sigler  
20 about criminal defendants' rights to request counsel  
21 at review hearings?

22 A. No.

23 Q. Ever do the same with Special Judge  
24 Gerkin?

25 A. No.

1 Q. Did you ever confirm with Special Judge  
2 Sigler that was aware of the changes in the statutes  
3 related to how Washington County was conducting cost  
4 review hearings?

5 A. I think he -- we had a discussion about the  
6 one statute I was talking about, so, yes.

7 Q. You said you became aware of that statute  
8 in 2018 just before you left the bench. Correct?

9 A. That's right. I remember. Somewhere in  
10 that period of time, I think.

11 Q. When did you have a conversation with  
12 Special Judge Sigler about the statute that provided  
13 for delaying the collection of fines and costs for  
14 108 days for people who were sentenced to  
15 incarceration?

16 A. I don't recall. At some point I remember a  
17 conversation -- I don't recall.

18 Q. Did Special Judge Sigler ever come up to  
19 you and say, "Judge DeLapp, there's a statute that  
20 just passed that affects how we're doing our cost  
21 review hearings; what do you think?"

22 A. He could have. That's the way the  
23 conversation could have started, yes.

24 Q. And that conversation would have been  
25 one-and-a-half to two years after the statute that

1 we're talking about actually passed; is that right?

2 A. I don't know about that. I don't know when  
3 that conversation took place.

4 Q. Did you ever require Special Judge Sigler  
5 to attend training on topics related to the  
6 collection or imposition of fines, fees, and costs?

7 A. Not that I'm aware of.

8 Q. Whose responsibility was it to train up  
9 special judges in the courthouses?

10 A. We had training that was provided --  
11 yearly training that was provided by the office of  
12 administrative courts at the initial conferences, so  
13 that's when the training was offered.

14 Q. Whose responsibility was it to make sure  
15 that special judges were, in fact, trained on the  
16 law?

17 A. I'm not sure there's a require -- I mean, I  
18 don't know. I don't know the answer to that.

19 Q. Why is --

20 A. Judges are required to maintain their  
21 training and go to -- go to -- go to training and get  
22 so many hours of training. If you're a juvenile  
23 judge, you're required so many hours of juvenile  
24 training. Those are things that are inputted by the  
25 office of -- the Administrative Office of the

1 Courts.

2 Q. So you don't believe it was your  
3 responsibility to make sure that Special Judge Sigler  
4 had the information and training he needed for the  
5 assignment that you put him; is that right?

6 A. I gave him the initial training and initial  
7 print-out, I guess, and that's what I did, so --

8 Q. Let me ask the question again. You didn't  
9 believe it was your responsibility to ensure that  
10 Special Judge Sigler had the information and training  
11 he needed for the assignment you put him in?

12 A. No.

13 Q. You made all the assignments in the  
14 courthouse; is that right?

15 A. Yes. They pretty much followed the normal  
16 thing what they were doing, but, yes, I did. I  
17 ordered an assignment once we got judge -- all the  
18 judges on there, yes; I did the assignment. They  
19 were -- pretty much were already made with a few  
20 tweaks, pretty much already made when Judge Dreiling  
21 was there.

22 Q. How did you decide to put Special Judge  
23 Sigler on the cost review docket?

24 A. Judge Gerkin was doing that, and it was  
25 assigned by Judge Dreiling. Special Judge Lansdown



1 had been doing that, and prior to her doing it, it  
2 was assigned by Judge Lanning, so I just followed  
3 practice.

4 Q. You said you gave your initial training to  
5 Special Judge Sigler. What was the initial training  
6 that you provided to Special Judge Sigler?

7 A. There was a -- I typed out a several page  
8 thing about, okay, how you handle certain things,  
9 arraignments, preliminary hearings. I can't  
10 recall everything. I believe fines and costs was in  
11 there, you know, what you would be doing, what you  
12 would be looking at. I typed it up, gave that to  
13 Judge Franks, at that time Judge Williams, Judge  
14 Franks, and Judge Sigler.

15 Q. So your training to Special Judge Sigler  
16 was handing him a few pages of something you typed  
17 up?

18 A. Yeah, and talk -- and then, you know talk  
19 again or answer any questions he might have as we  
20 went -- as we went along.

21 Q. What questions did Spherical Judge Sigler  
22 have for you about the cost docket?

23 A. I have -- I don't recall.

24 Q. Did he ever E-mail you about the cost  
25 docket?

1 A. Not that I recall, but he might have.

2 Q. Were you the supervisor of other courthouse  
3 staff such as minute clerks and cost  
4 administrators?

5 A. No. There was -- that's the court clerk's  
6 office. You know, you can, I think as a judge,  
7 request a certain min -- or not -- that a certain  
8 person not be your minute clerk, but where those are  
9 assigned and what those jobs are, are left to the  
10 court clerk -- court clerk.

11 Q. So the only person that you could fire in  
12 the courthouse, it was one of the special judges; is  
13 that right?

14 A. Well, court reporters were hired by the --  
15 judges, but as -- s of court personnel in the clerk's  
16 office, we cannot fire any of those people.

17 Q. Did you ever provide training to clerks or  
18 costs administrators or other courthouse staff on how  
19 to calculate other fines, fees, and costs?

20 A. No.

21 Q. Did you ever provide training to the minute  
22 clerks or cost administrators or other courthouse  
23 staff on how to calculate installment plans?

24 A. How to calculate the -- the amount they  
25 owed or the -- where to start on payment plans, I

1 mean, on the amount? I did talk about the \$75.00.

2 Q. So your training -- let me just ask the  
3 question. Your training that you provided to minute  
4 clerks, cost administrators and other courthouse  
5 staff was start off at \$75.00 for installment  
6 plans?

7 A. No, that wasn't training, that was just  
8 instruction we had.

9 Q. So you did not provide training to those  
10 individuals on calculating installment plans?

11 A. No, I did not. That's AOC that did that.

12 Q. Did you ever tell minute clerks or cost  
13 administrators or other courthouse staff that they  
14 should tell defendants that they may have the right  
15 to court-appointed counsel at cost review hearings?

16 A. No.

17 Q. Did you ever tell minute clerks or cost  
18 administrators or other courthouse staff that they  
19 should tell criminal defendants that they could seek  
20 to waive the remainder of their fines, fees, and  
21 costs if they were compliant for 24 months?

22 A. No.

23 Q. And you never waived or completely relieved  
24 a criminal defendant of their total fines, fees, and  
25 costs. Right?

1 A. No, not that I recall.

2 Q. You never told minute clerks or cost  
3 administrators or other courthouse staff that they  
4 could waive fines, fees, and costs for criminal  
5 defendants in certain circumstances?

6 A. That they themselves could waive that? I  
7 mean, that the -- the -- I didn't understand the  
8 question. That they themselves have the ability to  
9 waive those?

10 Q. Did you ever tell courthouse staff that  
11 they could waive fines, fees, and costs in certain  
12 circumstances?

13 A. No, sir.

14 Q. You did permit courthouse staff to change  
15 payments in certain circumstances, though. Right?

16 A. Yes.

17 Q. So how did they become aware that they were  
18 authorized to change payments?

19 They've always been, as far as I know,  
20 authorized to change payments and particularly when  
21 the cost administrator come up -- when the cost  
22 administrator came about, it's my understanding that  
23 all fines and costs were run through the cost  
24 administrator. That was the purpose of -- the AOC  
25 created that position, so they always had the ability

1 to change that.

2 They're the ones that asked the questions  
3 and could change (inaudible). So that's what they  
4 always have done since their creation, from my  
5 understanding.

6 Q. Mr. DeLapp, I want to ask you some  
7 questions specific to Sharonica Carter.

8 A. Okay.

9 Q. You were the judge who presided over her  
10 case. Correct?

11 A. Yes.

12 Q. I'm going to show you some documents that  
13 bear her signature.

14 A. Okay.

15 Q. I'm going to start off with Exhibit C. You  
16 recognize Exhibit C. Correct?

17 A. It's an order appointing a defendant an  
18 attorney on her initial charge, yes.

19 Q. I'm going to scroll down to the bottom.  
20 That appears to be your signature at the bottom.  
21 Correct?

22 A. It's my signature, yes.

23 Q. And what made you approve this order  
24 appointing Sharonica Carter an attorney?

25 A. I reviewed her -- she had filled out, I

1 believe, an affidavit for a court-appointed attorney  
2 that -- that is presented either to -- in the jail  
3 that comes from the court clerk's office, and it  
4 comes up to the court.

5 I review that, and then once I review that  
6 and see that she's in jail, and that she has not made  
7 bond, and she is indigent, appoint her an attorney.

8 Q. So what factors did you consider when you  
9 appointed Ms. Carter an attorney?

10 A. Whenever I --

11 MR. PEDERSON: Objection. Judge -- Mr.  
12 DeLapp, I just want to note that these are questions  
13 about judicial deliberations, which are privileged,  
14 that's -- that's your privilege, and I won't  
15 (inaudible), but I did want to put that on the  
16 record, and you may answer as you --

17 THE WITNESS: I -- yeah, I agree with that.  
18 I mean, I -- I did review the --

19 THE COURT REPORTER: Excuse me. I'm sorry.  
20 Who was that speaking just now that was saying --

21 MR. FOWLER: That was -- the objection was  
22 Devan Pederson.

23 THE COURT REPORTER: Okay. I just -- you  
24 know, I want to -- can't see everybody. All right.  
25 That's fine. Thank you. I'll insert it later.

1 BY MR. FOWLER:

2 Q. Mr. DeLapp, I'll ask you the question  
3 again. What factors did you consider in appointing  
4 Ms. Carter an attorney?

5 A. I think I just -- I -- I agree that -- I  
6 looked at the -- the -- all the stuff on the -- on  
7 the application for attorney, so beyond that, I don't  
8 recall everything, so --

9 Q. I'm going to show you Exhibit D.

10 A. Okay.

11 Q. This is a Judgment and Sentence order for  
12 Ms. Carter; is that correct?

13 A. That is correct.

14 Q. Now, this exhibit as well as Exhibit C,  
15 they appear to be fair and accurate copies of the  
16 orders you signed?

17 A. Yes.

18 Q. And this Judgment and Sentence order is  
19 dated September 22nd of 2011. Correct?

20 A. That's correct.

21 Q. I'm going to quickly flip back to Exhibit  
22 C. This order appointing counsel for Ms. Carter  
23 based on her indigency was signed on May 2nd of  
24 2011?

25 A. Yes. This was (inaudible) May 2nd, yes.

1 Q. So only a few months passed between your  
2 order finding that Ms. Carter was indigent and your  
3 signing of the J&S order; is that correct?

4 A. From May to September, yes.

5 Q. And as far as you recall, Ms. Carter was  
6 incarcerated during that time period --

7 A. Yes.

8 Q. -- right?

9 A. It was on a call, yes.

10 Q. Okay. I want to scroll through the  
11 Judgment and Sentence order with you.

12 A. Okay.

13 Q. And the question for you is, the Judgment  
14 and Sentence order does not spell out all of the  
15 fines, fees, and costs that will be imposed on Ms.  
16 Carter?

17 A. I mean, not in the J&S. It just says,  
18 shall pay costs, fees, and restitution in accordance  
19 with schedules.

20 Q. So when you sentenced Ms. Carter -- this is  
21 page three of Exhibit D -- all the order contained  
22 was an indication that she pay costs, fees, and  
23 restitution in accordance with schedules --

24 A. Right, right.

25 Q. -- right? You gave her no specific



1 amounts?

2 A. Just the yeah, yeah -- that amount? No.

3 Q. And as of September the 22nd, the day that  
4 you were sentencing Ms. Carter, the total of her  
5 fines and fees and costs had not been calculated?

6 A. That's correct.

7 Q. And did you calculate any fines, fees, and  
8 costs on September 22nd of 2011?

9 A. No.

10 Q. Did the clerk in the courtroom with you do  
11 so?

12 A. No. She handed her a slip with -- as I  
13 said, there's a little -- I think it was a yellow  
14 slip that they give that tells her what fine I  
15 imposed, what BCAA and what other things and then  
16 court costs, and that's sent with her down to the  
17 clerk's office, given to her if she's still in jail.  
18 I think she was released on that day or had that to  
19 go fill out a fines and cost schedule.

20 Q. I'll show you Exhibit E.

21 A. Yes.

22 Q. This is Attachment A that accompanied Ms.  
23 Carter's case. Right?

24 A. Correct.

25 Q. Is that a fair and accurate copy of Exhibit

1 A that accompanied Ms. Carter's case?

2 A. That's what's in -- yes.

3 Q. Could you read for us the date?

4 A. September 26, 2011.

5 Q. That was four days after you sentenced Ms.  
6 Carter. Right?

7 A. Yes.

8 Q. Who calculated these fines, fees, and  
9 costs?

10 A. Those that are typed in, the fines and the  
11 initial conversation was -- was done by my bailiff,  
12 Bertha Rogers. The other handwriting looks like that  
13 is Ms. Carla Fairlie's as she signed it, and she had  
14 it in the -- those amounts and then totaled it, it  
15 looks like.

16 Q. How did Carla Fairlie calculate these  
17 fines, fees, and costs?

18 A. Looked them up on the computer, I assume.

19 Q. What guidance did you give Ms. Fairlie in  
20 calculating the fines, fees, and costs for Ms.  
21 Carter?

22 A. None. They just -- that -- they -- they  
23 had this form that she -- this is the form that -- as  
24 an attachment to the J&S that is -- includes what we  
25 are to collect in cases.

1 Q. There was no hearing conducted on --

2 A. Right.

3 Q. -- September 26. Correct?

4 A. Right.

5 Q. So Ms. Carter was not present during  
6 this --

7 A. Right.

8 Q. -- calculation? Nor was Ms. Carter present  
9 when you --

10 A. Correct.

11 Q. -- approved this order? Now, before you  
12 signed off on this order, did you ask Ms. Carter  
13 about her ability to pay?

14 THE COURT REPORTER: Oh, just a minute.

15 Please --

16 BY MR. FOWLER:

17 Q. Before signing off on this order, did you  
18 ask Ms. Carter -- before signing off on the order,  
19 did you ask Ms. Carter about whether she had fines,  
20 fees, and costs from other --

21 A. No.

22 Q. -- jurisdictions?

23 A. I wasn't aware there was a Tulsa case, and  
24 I think that's referenced in that. I didn't ask her  
25 about fines, fees, and costs.

1 Q. Why did you approve the numbers that appear  
2 on this form?

3 A. Well, because they were certified to be  
4 true and accurate by my minute clerk, so I signed  
5 it.

6 Q. Before signing off on this order, did you  
7 consider waiving or relieving Ms. Carter of her  
8 fines, fees, and costs altogether?

9 A. No.

10 Q. Why not?

11 A. Just didn't. I mean, there -- that's what  
12 there was recommend -- fines, fees, and did not take  
13 that into consideration in Ms. Carter's case.

14 MR. FOWLER: Maybe this is a good stopping  
15 point. We could take another 15-minute break and  
16 come back at 12:05 central, if that works for folks?

17 THE WITNESS: 11:05, you mean?

18 MR. FOWLER: Yes.

19 THE VIDEOGRAPHER: We're going off the  
20 record at 10:49 a.m:

21 (Recess taken 10:49 a.m. - 11:04 a.m.)

22 THE VIDEOGRAPHER: Okay. We're back on the  
23 record at 11:04 a.m.

24 BY MR. FOWLER:

25 Q. All right. Mr. DeLapp, I want to ask you

1 what happened after you sentenced Ms. Carter, and I  
2 want to show you Exhibit G.

3 A. All right.

4 Q. You can see Exhibit G on your screen?

5 A. Yes.

6 Q. Exhibit G was essentially the installment  
7 plan that was imposed on Ms. Carter. Correct?

8 A. Yes.

9 Q. And it's dated on the bottom October 31st,  
10 2013?

11 A. Yes.

12 Q. It's also file stamped October 31st, 2013;  
13 is that right?

14 A. Uh-huh.

15 Q. And that's your signature above the line,  
16 Judge?

17 A. Yes.

18 Q. This was the form that was created in  
19 accordance with the cost administrator in calculating  
20 what the installment plan would be for Ms. Carter.  
21 Correct?

22 A. Yes.

23 Q. And that cost administrator, can you make  
24 out whose signature is there on the bottom?

25 A. Looks like Fuller. I can't remember her

1 first name. She -- is it Cynthia, maybe, Fuller? I  
2 don't really recall. The one that signed it at the  
3 very bottom that says Deputy, you're talking about,  
4 might be Cynthia Fuller, but the C. might stand for  
5 something else, but it's Ms. Fuller, yes.

6 Q. That box that begins with address and goes  
7 down to height, you did not fill out that box.  
8 Correct?

9 A. No.

10 Q. That was the cost administrator?

11 A. As far as I could tell, either Ms. Carter  
12 or the cost administrator.

13 Q. And the Employer Name where it says N/A,  
14 again, not your handwriting; that's the handwriting  
15 of somebody else?

16 A. None of that's my handwriting, exactly.

17 Q. Say that again.

18 A. None of that in that boxes are my  
19 handwriting.

20 Q. When the cost administrator was coming up  
21 with the amount that appeared on this form, did you  
22 instruct the cost administrator to review the  
23 Affidavit of Indigency that I showed you -- or excuse  
24 me, that you referenced earlier?

25 A. No.

1 Q. Did you ask the cost administrator to  
2 review your order appointing counsel?

3 A. No.

4 Q. You didn't ask Ms. Carter any questions  
5 about her employment. Right?

6 A. No, I did not.

7 Q. You didn't ask her any questions about  
8 whether she had a mental or physical disability.  
9 Correct?

10 A. No, I don't believe so.

11 Q. You didn't ask her any questions about  
12 whether she had fines, fees, and costs from other  
13 jurisdictions. Right?

14 A. No.

15 Q. You didn't ask her anything about what her  
16 cost of living would be like. Correct?

17 A. Correct.

18 Q. And the reason that you didn't ask any of  
19 these questions is because this did not happen at a  
20 hearing, the creation of this form?

21 A. That's correct. It happened down in the  
22 court clerk's office with Ms. Carter and the court  
23 clerk's office.

24 Q. Ms. Carter had been incarcerated for the  
25 entirety of the case up through the end of 2013.

1 Right?

2 A. That's right. Yes, I believe that's  
3 correct.

4 Q. And how old was she at this point in the  
5 case?

6 A. I don't know. Her birthday was '95, so --  
7 so she's 17, I guess. I don't know.

8 Q. Let me ask you, how did this number of  
9 \$75.00 get placed on this form? How did it get  
10 calculated?

11 A. I don't know. The clerk's office did it.

12 Q. And this number of zero dollars that's  
13 immediately due, how did that figure get calculated?  
14 How did that end up on the form?

15 A. The clerk's office again, the conversation,  
16 I between, believe between clerk's office and Ms.  
17 Carter.

18 Q. The \$75.00 is your suggested minimum that  
19 you had told the court administrator to impose?

20 A. It's the -- the \$75.00 is what I talked to  
21 the court administrator about starting out, you know,  
22 the discussion we had, yes.

23 Q. Why did you sign off on a sum of zero  
24 dollars immediately due?

25 A. Because most people could not pay



1 immediately on a case.

2 Q. Particularly a young woman who had been  
3 incarcerated for the last two years. Right?

4 A. Correct.

5 Q. And why did you sign off on \$75.00 per  
6 month due on November 29th?

7 A. Because I believe that would be a -- a  
8 reasonable amount after her talking to the court  
9 clerk's office and her having, I believe, her parent  
10 there, and they could make that payment. That's  
11 the -- that's the amount they came up with. There  
12 was no discussion with me about any other amount.

13 Q. The cost administrator didn't tell you  
14 about Ms. Carter's circumstances in her life?

15 A. No, she did not.

16 Q. And Ms. Carter couldn't tell you anything  
17 about her circumstances because this did not happen  
18 at a hearing?

19 A. That's correct.

20 Q. Her mother could not tell you about her  
21 daughter's circumstances because there was no hearing  
22 that concerned the calculation of this installment  
23 plan?

24 A. Correct.

25 Q. When did you next see Ms. Carter after you

1 signed the installment plan?

2 A. Probably the review date.

3 Q. I'm going to show you Exhibit H.

4 A. Okay.

5 Q. Exhibit H is your remand order for Ms.  
6 Carter dated January 29th, 2014; is that right?

7 A. Correct.

8 Q. This appears to be a fair and accurate copy  
9 of your remand order?

10 Q. Yes.

11 Q. It's dated January 9th, but it's stamped  
12 February 19th. Correct?

13 A. Yes, that's what it looks like, yes.

14 Q. It has your signature at the bottom?

15 A. Yes.

16 Q. This form, along with Exhibit G, appear to  
17 be fair and accurate copies of your orders. Right?

18 A. Yes.

19 Q. Why is the file stamp February 19, but it's  
20 dated January 9th?

21 A. I have no idea, unless they sent it to the  
22 jail and did a return on it. I don't know. I don't  
23 know the answer to that question.

24 Q. Did you modify this order or back-date it,  
25 Mr. DeLapp?

1 A. No, I did this order and then sent it down  
2 to the clerk's office.

3 Q. There are allegations that you back-dated  
4 orders in other cases related to contempt.

5 A. There was allegations of that, yes.

6 Q. And your claim in this case is that you  
7 didn't modify any orders related to Sharonica  
8 Carter?

9 A. I didn't modify any orders, period.

10 Q. Okay. So at this -- this remand order, how  
11 did you choose the bond amount?

12 A. She was ordered to pay \$75.00 a month  
13 beginning November. She had paid zero, and so I  
14 remanded her for the two months that she had failed  
15 to pay.

16 Q. You didn't ask her her experiences in the  
17 three months since you had seen her last. Right?

18 A. Her experiences in ability to pay? I asked  
19 her about her ability to pay and why she had not  
20 paid.

21 Q. Well, let's get specific. You did not ask  
22 Ms. Carter whether she had a job?

23 A. I don't recall whether I did or not.

24 Q. You didn't ask Ms. Carter about whether she  
25 had been looking for a job?

1 A. I don't recall.

2 Q. But Ms. Carter told you she had been  
3 looking for a job, didn't she?

4 A. She may have. I don't know. I don't  
5 recall.

6 Q. You didn't ask her about her financial  
7 obligations?

8 A. No.

9 Q. You didn't ask her about whether this  
10 conviction was affecting her ability to get a job?

11 A. No, I didn't ask her that.

12 Q. You didn't go back and check to see whether  
13 there was an Affidavit of Indigency in the file?

14 A. Her initial -- the one she initially filed?

15 Q. Correct.

16 A. Yeah, I knew that she had a court-appointed  
17 attorney and had an af -- indigency, yes.

18 Q. So you knew that she had been appointed an  
19 OIDS attorney in the past?

20 A. Yeah, I appointed her that.

21 Q. And when you say, "I don't recall," to  
22 particular questions that I'm asking you, this form  
23 also doesn't indicate any of the questions you asked  
24 or any of the answers that Ms. Carter gave.

25 A. It does not, correct.

1 Q. At cost review hearings, you didn't ask for  
2 a court reporter to be present?

3 A. No, I did not.

4 Q. Sorry, Mr. DeLapp. I think I've lost the  
5 video. There we go. I have you back.

6 And at cost of review hearings, you never  
7 told criminal defendants that they had the right to a  
8 court reporter, but they could waive that right if  
9 they so desired?

10 A. That's true.

11 Q. There was no audio recording of cost review  
12 hearings?

13 A. I think they -- I think the cameras in the  
14 courtroom recorded audio and camera, but there was  
15 nothing by the court, just the cameras, the security  
16 cameras.

17 Q. And those cameras are meant to check for  
18 security or to see if things are -- people are doing  
19 things they shouldn't be doing in the courtroom.  
20 Right?

21 A. Correct.

22 Q. Those are the security cameras you  
23 consulted when you held a woman in contempt for  
24 leaving sunflower seeds on the ground?

25 A. For spreading sunflower seeds on the

1 ground, yes.

2 Q. Those cameras are not an official court  
3 record of what happened to Sharonica Carter on  
4 January 9th?

5 A. No, they are not.

6 Q. So you don't have a record of what she said  
7 to you?

8 A. No.

9 Q. You didn't tell Ms. Carter that she had a  
10 right to a court-appointed attorney if you were  
11 considering remanding her?

12 A. No, I did not.

13 Q. You said that you chose the amount of \$150  
14 because that was the amount outstanding for her  
15 fines, fees, and costs. Right?

16 A. Right.

17 Q. You didn't take into account whether she  
18 was able to get a job or her current employment or  
19 any physical or mental disabilities in determining  
20 what bond to put on Ms. Carter?

21 A. No.

22 Q. And that was your standard practice across  
23 cost review dockets, to impose the bond in the full  
24 amount -- or excuse me, in the missed amount that was  
25 due?

1 A. Yes.

2 Q. So in some cases you were setting a bond of  
3 thousands of dollars. Correct?

4 A. If they had been gone for a number of years  
5 in time, yes, I would do that.

6 Q. So in some cases you were imposing  
7 thousands of dollars without asking yourself whether  
8 these people could pay that money upfront?

9 A. No, we always asked if they can pay it  
10 upfront or make a payment, and then if they cannot  
11 give -- get a payment, then they would be remanded,  
12 yes.

13 Q. Was that another of the mistakes you said  
14 you made during your time on the bench?

15 A. No, it's not.

16 Q. You don't think it was been a mistake to  
17 set a bond, for example, \$8,000 for a criminal  
18 defendant for whom you had previously appointed an  
19 OIDS attorney?

20 A. Not when they were gone long enough not to  
21 pay \$8,000. I had people that were sometimes were  
22 gone for years and didn't pay.

23 Q. Why did you think thousands of dollars was  
24 appropriate? Was it to punish them?

25 A. No, it would supply the money.

1 Q. I'm not from Oklahoma, but I understand it  
2 correctly that the jail isn't generating money by  
3 detaining people. Right?

4 A. You get \$38.00 a day for jail incarceration  
5 fees.

6 Q. No, I understand that. I understand that  
7 there's a credit that's generated. But in terms of  
8 money that actually flows to all the sources that you  
9 were talking about for victims for a drug fund, money  
10 doesn't actually get transferred from the jail to any  
11 of those funds when you stepped people back and  
12 incarcerated them?

13 A. If that -- if part of their -- if part of  
14 the cost that they owed were jail incarceration fees,  
15 there is money paid to the -- to the court clerk's  
16 office that goes -- I believe from the court clerk's  
17 office to the jail for those incarceration fees.

18 Q. And the remainder that I was asking you  
19 about?

20 A. Then the rest goes to pay the fines and  
21 costs, and those other things.

22 Q. You're saying the jail actually transfers  
23 money to these other funds?

24 A. The jail -- I mean, the court clerk's  
25 office transfers money to the jail. I think that's



1 right. I'm not sure. I know that there's -- that  
2 there is actual money -- it's not a credit. It's  
3 their actual -- there's actual money paid for those  
4 incarceration fees.

5 Q. I'm showing --

6 A. (Inaudible).

7 Q. -- you exhibit -- I'm sorry. Were you  
8 finished?

9 A. Sure, go ahead.

10 Q. I'm going to show you Exhibit I.

11 A. Okay.

12 Q. Exhibit I is a document -- an order  
13 documenting your issuance of a bench warrant for Ms.  
14 Carter --

15 A. Yes.

16 Q. -- right? And this document is dated  
17 February 6th, 2014?

18 A. Yes.

19 Q. That's your signature on the bottom above  
20 Curtis L. DeLapp?

21 A. Yes.

22 Q. It appears to be a fair and accurate copy  
23 of the order you issued?

24 A. Yes.

25 Q. In what amount did you set the bench

1 warrant for Ms. Carter in February?

2 A. She failed to appear -- I don't know. I  
3 don't -- I don't recall. I haven't looked at that  
4 actual bench warrant.

5 Q. There was no court reporter present at the  
6 February hearing?

7 A. No, it was just a failure to appear at a  
8 docket, and Ms. Carter's failure to appear, and so a  
9 bench warrant was issued, yes.

10 Q. I'll ask you the question again. There was  
11 no court reporter present at this February 6th  
12 hearing?

13 A. No, there was not.

14 Q. There was no official court recording --  
15 reporting of the February 6th hearing?

16 A. You mean audio recording or video  
17 recording?

18 Q. Correct.

19 A. No, there was not.

20 Q. You saw Ms. Carter again after this  
21 hearing. Right?

22 A. Yeah, I believe at some point in time there  
23 was an application to revoke file, if I recall right,  
24 at some point.

25 Q. I'm going to show you Exhibit J.

1 A. Yeah.

2 Q. This is an order dated April 19th of 2016.  
3 Correct?

4 A. Yes.

5 Q. And could you read the name of the order?

6 A. Order Appointing Counsel for Criminal  
7 Defendant.

8 Q. You, again, appointed Ms. Carter an  
9 attorney based on her Affidavit of Indigency.  
10 Right?

11 A. Yes, (inaudible), yeah, yes.

12 Q. Right. And you found that by reason of  
13 poverty, she was entitled to an attorney at the  
14 State's expense?

15 A. Yes. She was indigent, yes.

16 Q. So you're saying you appointed her an  
17 attorney because she was jailed; is that right?

18 A. Well, she was also in jail, yeah. I mean,  
19 I -- obviously, if they can't post bond and they have  
20 an affidavit for indigency, that indicates to me  
21 they're indigent, yes.

22 Q. The basics of this order is that she was  
23 too poor to hire her own attorney. Correct?

24 A. Yes.

25 Q. I want to show you -- give me one second.

1 I'm going to stop sharing my screen so I can queue up  
2 a few more documents.

3 I'm going to show you Exhibit K.

4 A. Okay.

5 Q. You recognize this document. Right?

6 A. It's an Application for Court-appointed  
7 Counsel and Affidavit of Financial Inability to  
8 Employ Counsel, yes.

9 Q. Now, scroll down so you can see all three  
10 pages. That appears to be a fair and accurate copy  
11 of the form that Ms. Carter completed on April 14th,  
12 2016. Correct?

13 A. Yeah, yes.

14 Q. And this is the documents that you reviewed  
15 in signing your order appointing her counsel?

16 A. Yeah.

17 Q. So you knew at this point in time that Ms.  
18 Carter had no job and had no resources?

19 A. Well, I knew at this time that Ms. Carter  
20 put on her application for attorney that all those  
21 things were not applicable, so -- I get that quite a  
22 bit where a defendant would say, family income, not  
23 applicable; things I own, not applicable.

24 I mean, no -- they don't talk about -- and  
25 places on there for clothing and jewelry, and it's

1 nonapplicable, nonapplicable, nonapplicable. So it  
2 doesn't say that she doesn't own those things. She  
3 filled this out to be nonapplicable.

4 So that means to me that -- different than  
5 I didn't own it, but I went ahead, because she was in  
6 jail, because she contacted and then she had written  
7 people that could verify this, I gave her a  
8 court-appointed attorney. But you'll notice  
9 everything is nonapplicable, N/A.

10 Q. Well, you could only appoint her an  
11 attorney if you made the judicial finding that she  
12 was unable to afford an attorney. Right?

13 A. Exactly.

14 Q. And you made a judicial finding that she  
15 was unable to afford an attorney?

16 A. Exactly.

17 Q. And it was based on your representations to  
18 you in this document. Right?

19 A. Right, yeah, that she -- that nothing was  
20 nonapplicable, that she --

21 Q. Right, that --

22 A. -- was completely -- you know, so, yes, and  
23 then she was facing a revocation, so, yes, I thought  
24 she needed an attorney.

25 Q. And to be clear, you didn't yourself ask

1 her any of these questions. Right?

2 A. No, this form is probably filled at the  
3 jail, sent to the court clerk's office, it comes up,  
4 I looked at it. And given the bond and given --  
5 knowing Ms. -- you know, knowing Ms. Carter's  
6 application revoked -- that she's looking at getting  
7 revoked, I went ahead and appointed her an  
8 attorney.

9 Q. So this order that you signed was in April  
10 of 2016. I'm going to show you Exhibit L. This is  
11 the new Judgment and Sentence order that you imposed  
12 on Ms. Carter on June 1st, 2016; is that correct?

13 A. That is correct, yes.

14 Q. Going down to page two, that's your  
15 signature above "Curtis DeLapp"?

16 A. Yes, it is.

17 Q. This appears to be a fair and accurate copy  
18 of the June 2016 Judgment and Sentence order?

19 A. Yes, an order revoking, yeah, her suspended  
20 sentence, yes.

21 Q. Right. And imposing a new Judgment and  
22 Sentence on her. Correct?

23 A. Judgment and Sentence after the revocation  
24 proceedings, yes, correct.

25 Q. Okay. Why is this order stamped July

1 25th?

2 A. You'd have to ask Jean Davis.

3 Q. When did you sign this order, Mr. DeLapp?

4 A. Scroll down. I believe there's a date  
5 there, so sometime after it was prepared by my  
6 bailiff, and at some point I signed it after the  
7 date. I don't -- I don't -- I can't tell you why it  
8 was -- whether they sent it to the sheriff's office  
9 or what, why it's file-stamped.

10 Q. At this hearing where you imposed a new  
11 sentence on Ms. Carter, you did not calculate her new  
12 total fines, fees, and costs?

13 A. No, I didn't.

14 Q. You didn't go back and review her updated  
15 Affidavit of Indigency?

16 A. No, I did not.

17 Q. Was there a court reporter present at this  
18 hearing?

19 A. May have been. I'd had to look at the  
20 minutes in the actual -- I mean, the court minute to  
21 say if there was. Usually there were, so -- but it  
22 would be on the docket sheet. It should be on the  
23 docket sheet. I don't have that one in front of  
24 me.

25 Q. Again, the total of the fines, fees, and

1 costs for Ms. Carter were calculated after her  
2 sentencing hearing?

3 A. Correct.

4 Q. And, again, the total of her fines, fees,  
5 and costs were imposed without you asking any  
6 questions about education, physical or mental  
7 disability or her efforts to find a job?

8 A. Correct.

9 Q. In imposing the total fines, fees, and  
10 costs, though, you knew that she had been  
11 incarcerated leading up to the revocation and leading  
12 up to the sentencing?

13 A. Yes.

14 Q. And you knew from the Affidavit of  
15 Indigency or at least it was your interpretation  
16 that she had no assets and that she had no income?

17 A. No. I knew that she had put nonapplicable  
18 on those, yes.

19 Q. Well, you couldn't judicially appoint an  
20 attorney unless you made a judicial finding that she  
21 could not afford an attorney. Right?

22 A. I mean, she's in jail; she's facing  
23 revocation; she had a court-appointed attorney  
24 before; she cannot post bond; and then she had an  
25 application that had nonapplicable on there. I'm



1 going to appoint her an attorney to represent her if  
2 she's facing the possibility of being revoked to the  
3 Department of Corrections.

4 Q. You signed an order saying that she was  
5 entitled to an attorney based on poverty and put your  
6 signature on it. Right?

7 A. That's correct, there being more factors go  
8 into that as well, so, I mean --

9 Q. Okay. Tell us about what factors go into  
10 your determination that somebody is entitled to an  
11 attorney based on poverty.

12 A. I just told you poverty and those other  
13 things are what I look at.

14 Q. Your order said based on poverty. That's  
15 what you signed. Right?

16 A. Yeah. That's what I signed, yes.

17 Q. So that was your judicial order; it was  
18 based on poverty?

19 A. It's -- I've answered the question, I  
20 believe.

21 Q. Let's go to Exhibit M. Exhibit M is the  
22 order imposing the jail costs on Ms. Carter.  
23 Correct?

24 A. Yes.

25 Q. This is dated June 23rd, 2016?

1 A. Yes.

2 Q. This order is of the category that you  
3 previously testified was part of your mistakes on the  
4 bench. Right?

5 A. Yeah. I should have reduced some of these,  
6 yes.

7 Q. You should have reduced Ms. Carter's jail  
8 costs?

9 A. Could have, yes. I'm not sure I'd call it  
10 a mistake, and I don't think -- well, I mean, I could  
11 have, yes.

12 Q. I'm asking the question differently. You  
13 should have reduced Ms. Carter's jail costs.  
14 Correct?

15 A. No, I'm not going to agree to that, that I  
16 should have, so --

17 Q. How high would that --

18 A. (Inaudible).

19 Q. How high would that number have to have  
20 been for you to testify under oath that "I should  
21 have reduced Ms. Carter's jail costs"?

22 A. I have no idea.

23 Q. Well, what's the limit in your mind for  
24 those defendants for whom you did make a mistake?  
25 What was too much?

1           A.    I think I said something about, you know,  
2   that when they got to be around \$5,000, something  
3   earlier like that, when it got to be a lot of stuff,  
4   so --

5           Q.    Does your estimation on what was too much  
6   vary based on age or time incarcerated prior to you  
7   signing an order imposing thousands of dollars of  
8   costs on them?

9           A.    No.

10          Q.    Why is this order stamped July 29th even  
11   though the body of the order reads June 1st (sic)?

12          A.    Where does the body of the order read June  
13   1st?

14          Q.    Excuse me. Even though the body of the  
15   order reads June 23rd, why is it stamped July 29th?

16          A.    Because it goes to the sheriff's office,  
17   and Ms. Crawford at that time would calculate the day  
18   it went out -- it went out at the time that attached  
19   to -- Attachment B goes to there.

20                Sometimes the sheriff's office took a long  
21   time to get a calculation, and my bailiff would have  
22   to call. They would calculate -- they would figure  
23   out the actual days of incarceration on the present  
24   charge. That would then come back to my office.

25                The handwriting of \$1,824 is my bailiff

1 Bertha Rogers' handwriting. She would calculate the  
2 amount of \$38.00 a day times the 48, then I would  
3 sign that, then I would give it to the court clerk's  
4 office, and whenever at their convenience, they would  
5 file-stamp it.

6 Q. Why did you approve \$1,824 in jail costs  
7 imposed on Ms. Carter?

8 A. That was the -- the amount that I -- \$38.00  
9 a day times 48 days.

10 Q. In putting your signature below the number  
11 \$1,824, what factors did you consider?

12 A. I just signed it based upon what the return  
13 was (inaudible). I didn't consider any factors in  
14 this case other than it's jail incarceration fees or  
15 a statute.

16 Q. When you imposed these costs on Ms. Carter,  
17 she wasn't present in front of you at a hearing or in  
18 your chambers?

19 A. The jail incarceration costs, no. That's  
20 found out later whenever the jail does the  
21 calculations.

22 Q. Give me one moment again to queue up some  
23 more exhibits.

24 Okay. Mr. DeLapp, I'm going to show you  
25 Exhibit N as in Nancy.

1 A. All right.

2 Q. This is a Notice of Court Hearing for  
3 Payments of Fines and Costs for Sharonica Carter.  
4 Right?

5 A. That's what it says, yes.

6 Q. It appears to be a fair and accurate copy  
7 of the document that was sent out to Ms. Carter and  
8 then made a part of her court file?

9 A. It's one that's been file-stamped October  
10 25th, 2017, by Danna Forbes, yes.

11 Q. This document -- well, let me ask you this:  
12 This form document, what role did you have in  
13 creating this form document that was sent out to  
14 criminal defendants who were incarcerated?

15 A. None.

16 Q. You were aware that these forms were sent  
17 out to criminal defendants who were incarcerated?

18 A. These are sent out by DOC. Yes, I've seen  
19 these forms before sent out to -- sent out to --  
20 or signed by -- I don't know if they're sent out or  
21 whether they are signed at the time they get out. I  
22 don't know when that happens -- when that takes place  
23 or the process is. I just know these forms exist.

24 Q. So I'm directing you to go to the line that  
25 begins, "You are to appear before the cost court

1 administrator or the district judge of Washington  
2 County within 72 hours of release."

3 You knew that that line appeared in some of  
4 these notices or letters that criminal defendants  
5 were being given. Right?

6 A. Yes. It also appears, I believe, on the  
7 J&S's as well.

8 Q. Did you ever tell anybody that these  
9 notices should say, "Report to a judicial officer,"  
10 not a court administrator?

11 A. I didn't create these documents, so I  
12 don't -- I think this document says what I've been  
13 saying. The court clerks, cost administrator took  
14 over the role of much of the stuff that the judges  
15 were doing, so I did not compare this. I don't know  
16 where this came from, but it looks like DOC is also  
17 in the opinion that you can appear before the cost  
18 administrator for those setting up a payment plan.

19 Q. I'll ask you again: Did you tell anybody  
20 that these notices or letters should say, "Report to  
21 a judge," not a court administrator?

22 A. No.

23 Q. Mr. DeLapp, is a meeting with a court  
24 administrator a hearing?

25 A. No, I mean, not in the sense of seeing a

1 judge.

2 Q. Did the defendant ever report to your  
3 courtroom for a hearing that they were told about  
4 through one of these letters or notices?

5 A. Some would show up, yes. Some would show  
6 up in the courtroom saying, "Judge, I just got out of  
7 DOC, I'm here to report," and then I would send them  
8 to see the court cost administrator.

9 Q. So some criminal defendants did show up  
10 after getting this sort of notice in front of you as  
11 the judge?

12 A. Exactly, yes, they did. They showed up  
13 and --

14 Q. And you would not conduct a hearing for the  
15 folks who showed up in front of you as the judge?

16 A. No, I sent them to the court cost  
17 administrator.

18 Q. I want to show you Exhibit E (sic). This  
19 is essentially the installment plan that you signed  
20 for Ms. Carter on October 17th. Right?

21 A. This is which exhibit?

22 Q. Exhibit O. I'm sorry if I misspoke that.

23 A. You said E, yes. This is Exhibit O. Yeah,  
24 this is the payment plan October -- yes, October 17,  
25 2017.

1 Q. Does it appear to be a fair and accurate  
2 copy?

3 A. Yes.

4 Q. That's your signature again above the line  
5 that says "Judge"?

6 A. Yes.

7 Q. You signed this order after Ms. Carter met  
8 with the cost administrator?

9 A. Yeah. She met with Danna Forbes, the cost  
10 administrator.

11 Q. For Ms. Carter for this new installment  
12 plan that you judicially approved, there was no  
13 hearing before you?

14 A. No.

15 Q. How did Danna Forbes choose the number  
16 \$75.00 per month?

17 A. Like I said, Danna Forbes was the one -- I  
18 believe the one I talked to about starting out at  
19 \$75.00 as the general starting out, so you'll have to  
20 ask in this particular case how she chose that number  
21 other than it is the number that we -- that we had  
22 talked about. That's what I testified earlier.

23 Q. Why did you choose to sign and approve the  
24 amount \$75.00 monthly?

25 A. It seemed reasonable at that point on.



1 Q. Why?

2 A. Because she was out, and that was -- it  
3 just seemed reasonable.

4 Q. In your mind, what made it seem  
5 reasonable?

6 A. That, as I said, I mean, that seems like a  
7 fair and reasonable amount to start out as. If she  
8 talks to the defendant and they say, "Yeah, I can do  
9 that," then that's what my -- I think that is a  
10 reasonable amount.

11 Q. She never told you -- Danna Forbes never  
12 told you that Ms. Carter said, "Yes, I can do \$75.00  
13 per month"?

14 A. That's where I -- all that conversation was  
15 between them in the court clerk's office.

16 Q. So when your order at the top says, "After  
17 hearing as to the defendant's financial ability to  
18 pay fines and/or costs," you actually didn't hear  
19 from Ms. Carter about her financial ability to pay  
20 fines, and/or costs, did you?

21 A. No, I did not.

22 Q. And Danna Forbes didn't tell you anything  
23 about Ms. Carter's ability to pay fines and/or costs  
24 because you didn't have a conversation with Ms.  
25 Forbes?

1 A. No. That's why we got the form, you know.  
2 No, she did not.

3 Q. Did you ask Ms. Forbes what questions she  
4 asked of Ms. Carter?

5 A. No.

6 Q. Was this meeting between Ms. Forbes and Ms.  
7 Carter recorded in any way at all?

8 A. Not that I'm aware of.

9 Q. Now, who wrote in "Sigler"?

10 A. No, I noticed that being -- I don't know.  
11 I -- I assumed that's Ms. Forbes' writing.

12 Q. You didn't write it in "Sigler"?

13 A. No. That is not my writing.

14 Q. Let me show you Exhibit P. Exhibit P is an  
15 order dated court minute, January 3rd, 2018, signed  
16 by a judge. Right?

17 A. By Judge Sigler, yes.

18 Q. This appears to be a fair and accurate copy  
19 of the court minute?

20 A. Yes.

21 Q. And this court minute indicates that Ms.  
22 Carter was compliant with payments. Right?

23 A. That's correct.

24 Q. As of January 3rd, 2018, you were still in  
25 office?

1 A. Yes.

2 Q. You were still the district judge for  
3 Washington County?

4 A. Yes.

5 Q. Special Judge Sigler still reported to  
6 you?

7 A. Yes.

8 Q. Why would you pass this case off to Special  
9 Judge Sigler?

10 A. I did not pass it off. Apparently the  
11 court clerk's office passed it off. It should have  
12 remained with me.

13 Q. Why should it have remained with you?

14 A. Because Ms. Carter was my youthful offender  
15 case, and I kept the juvenile youthful offender  
16 cases. That's -- she should have -- it should have  
17 remained with me, with me.

18 Q. Did you ever talk to Special Judge Sigler  
19 about Ms. Carter's prior appearances before you?

20 A. Not that I'm aware of.

21 Q. When you passed off defendants from your  
22 docket to the cost docket, did you ever talk with  
23 Special Judges Gerkin or Sigler about the defendants'  
24 prior appearances before you?

25 A. No.

1 Q. And because there was no recording or  
2 transcript, the special judge overseeing the cost  
3 review dockets really couldn't know what had happened  
4 at those hearings. Right?

5 A. Correct.

6 Q. And if your prior orders were filled out  
7 and just said, "remanding," that wouldn't tell the  
8 later special judge what you actually inquired about  
9 of a criminal defendant at a prior cost hearing or at  
10 sentencing. Right?

11 A. True.

12 Q. So you never told Judge Sigler about Ms.  
13 Carter's employment status as it was when she  
14 appeared before you?

15 A. No.

16 Q. And you never told Special Judge Sigler  
17 about Ms. Carter's financial status or her mother's  
18 financial status. Right?

19 A. Correct.

20 Q. You never told Special Judge Sigler  
21 anything about what happened at those hearings where  
22 there was no court reporter and no electronic  
23 hearing?

24 A. Correct.

25 MR. FOWLER: I'm going to suggest that we

1 take a -- let's see. You folks want to break for  
2 lunch now, actually? Would that work for everyone?

3 THE COURT REPORTER: Yes.

4 MR. FOWLER: Why don't we do an hour, and  
5 then we can come back at 12:40 central, 1:40 eastern.

6 THE VIDEOGRAPHER: We're going off the  
7 record at 11:41 a.m.

8 (Recess taken 11:41 a.m. - 12:43 p.m.)

9 THE VIDEOGRAPHER: We're back on the record  
10 at 12:43 p.m.

11 BY MR. FOWLER:

12 Q. Okay. Mr. DeLapp, I wanted to shift and  
13 ask you some questions about Mrs. Amanda Feenstra,  
14 whom you might know better as Amanda Ackerson before  
15 she --

16 A. Okay.

17 Q. That was another case or cases that you  
18 presided over. Right?

19 A. Yes.

20 Q. I want to show you Exhibit Q.

21 A. Okay.

22 Q. Do you have a paper copy in front of you,  
23 too?

24 Q. Do I have a copy of that? No.

25 A. Okay. Then I'll pull up Exhibit Q on the

1 screen here.

2 A. Okay.

3 Q. Exhibit Q was Mrs. Ackerman's Judgment and  
4 Sentence order in CF 2014-528. Right?

5 A. That's correct.

6 Q. And I'll scroll down so you can see to the  
7 bottom. That's your signature on the third page of  
8 the three-page document?

9 A. Yes.

10 That appears to be a fair and accurate copy  
11 of the Judgment and Sentence order for --

12 A. Yes.

13 Q. -- ackerson in this case?

14 A. Yes.

15 Q. This order -- I'll go back up to the top --  
16 is dated April 29th, 2015. Right?

17 A. Yes.

18 Q. And like Mrs. Carter's Judgment and  
19 Sentence order, this order nowhere in the three pages  
20 states what the costs, fees, or restitution will be  
21 in a specific amount.

22 A. Correct.

23 Q. So as of April 29th, the date of Mrs.  
24 Feenstra's sentencing, the total of her fines, fees,  
25 and costs had not been calculated?

1 A. Correct.

2 Q. And consistent with your practice in your  
3 other felony cases, you didn't ask her at sentencing  
4 about her job or her income or disability or  
5 dependents or anything else along those lines.  
6 Right?

7 A. Correct.

8 Q. At sentencing, did you tell Mrs. Feenstra  
9 that she could work at the courthouse once a month to  
10 pay off some of the costs that might be imposed in  
11 the future?

12 A. I don't remember saying that at all. I  
13 don't recall that.

14 Q. Have you read the complaint in this case?

15 A. No.

16 Q. You were a defendant in the case.

17 A. Yes.

18 Q. You were served a copy of the complaint.

19 A. At some point, yes. It's been a while.

20 Q. Your testimony is you never read over a  
21 copy of the Civil Rights lawsuit against you?

22 A. No, I didn't read it. I mean, I scanned  
23 through it, so --

24 Q. Did you offer criminal defendants on any  
25 occasion at all, whether it was Mrs. Feenstra or

1 anybody else, the chance to work at the courthouse  
2 once a month to pay off fines, fees, or costs?

3 A. No. I don't recall ever doing that.

4 Q. When you say you offered some people  
5 community service later in time at a cost docket  
6 hearing, what kind of community services did you  
7 offer to folks?

8 A. There was a list of -- or there usually --  
9 a list either from -- that was generated by a  
10 nonprofit or they could turn it in hours to their --  
11 for example, to Ms. Willaford, and she had a list for  
12 community sentencing, and there was a list that was  
13 available, sometimes even provided the list to them.

14 MR. WILLIFORD: Can I just jump in here  
15 real quick here just so everybody's clear on the  
16 record? Mr. DeLapp, you've referred to a Ms.  
17 Willaford a handful of times. I just want to  
18 clear -- I don't have any information whatsoever to  
19 this individual that I know of at all.

20 So just so that's clear for everybody.

21 THE COURT REPORTER: And was that Mr.  
22 Pederson?

23 MR. WILLIFORD: That was Mr. -- that was  
24 Mr. Williford.

25 THE COURT REPORTER: Oh, gosh, thank you.



1 MR. WILLIFORD: I think the last name is  
2 spelled differently if I -- believe her last name is  
3 spelled W-i-l-l-a-f-o-r-d and this is Mr. Williford,  
4 spelled W-i-l-l-i-f-o-r-d.

5 THE COURT REPORTER: Okay.

6 BY MR. FOWLER:

7 Q. So the community service that was offered  
8 through Ms. Willaford, her list of organizations,  
9 that was for folks who were on probation, who were  
10 out in the community with a suspended sentence.  
11 Right?

12 A. Yes. I mean, we would ask the same list --  
13 I would give the same list out, or I would tell any  
14 nonprofit -- they could go to any nonprofit and do  
15 their community sentencing and turn that in.

16 Q. And it's your testimony that you never  
17 offered anybody the chance to come into the  
18 courthouse and work in the courthouse to pay off  
19 fines, fees, or costs?

20 A. Not that I recall. I don't ever recall  
21 that ever being a (inaudible).

22 Q. On the Judgment and Sentence order as well  
23 as on Attachment A, the stock forms, there is no  
24 place for community service?

25 A. No. There's usually on the probation

1 rules -- so there's a long list of probation rules,  
2 and it says down there so many hours. I believe it's  
3 on the DA's supervised rules that the DA's office  
4 created. It's on the rules of probation that come  
5 both supervised and unsupervised. Yeah, that is --  
6 that's put on the probation rules.

7 Q. If you're not on probation, you only have  
8 the Judgment and Sentence order and your fines, fees,  
9 and costs order, Attachment A. Right?

10 A. Uh-huh.

11 Q. So is your -- that -- that was a yes?

12 A. Yes.

13 Q. So if you're not on probation, but you have  
14 fines, fees, and costs that are imposed upon you on  
15 an installment plan --

16 A. Uh-huh.

17 Q. -- you don't have any document that is  
18 imposing community service on you?

19 A. Correct.

20 Q. And as a matter of practice, at sentencing,  
21 you did not impose community service as a substitute  
22 for fines, fees, and costs?

23 A. No, I did not.

24 Q. In fact, at sentencing, you never  
25 considered swapping in community service in lieu of

1 imposing the total fines, fees, and costs that were  
2 calculated by your clerk or the cost administrator?

3 A. I'm not sure I would say never. I mean, I  
4 think I considered that in some rare cases.

5 Q. But you never actually did it?

6 A. Not that I'm -- not that I can recall.

7 Q. I want to show you Exhibit R. Exhibit R is  
8 the total calculation of fines, fees, and costs for  
9 Mrs. Ackerson in this case. Right?

10 A. Correct.

11 Q. And, again, it's your signature down there  
12 at the bottom?

13 A. Correct.

14 Q. Again, this appears to be a fair and  
15 accurate copy?

16 A. Correct.

17 Q. Who filled out all of the amounts that are  
18 written throughout the document?

19 A. The written amounts would be -- I was  
20 assuming would be Ms. Fairlie, who signed it at the  
21 bottom.

22 Q. And how did Ms. Fairlie calculate the  
23 amounts that she wrote in on Attachment A?

24 A. I assume she got it off the KellPro  
25 docket.

1 Q. What guidance did you provide Ms. Fairlie  
2 about filling out this document specifically for Mrs.  
3 Feenstra?

4 A. Just -- she just has the document and plugs  
5 in the numbers.

6 Q. This document is signed and dated May 22nd,  
7 2015.

8 A. Okay.

9 Q. That's about a month after Mrs. Feenstra's  
10 sentencing took place in the courthouse?

11 A. Okay.

12 Q. Is that a yes?

13 A. Yes. I'm sorry. It is dated May 22nd,  
14 2015, yes.

15 Q. Mrs. Feenstra was not present when you  
16 signed this order?

17 A. That's correct.

18 Q. Before you signed this order, you hadn't  
19 asked Mrs. Feenstra about dependence or fines, fees,  
20 and costs in other jurisdictions or mental or  
21 physical disability?

22 A. That's correct.

23 Q. Although you had not asked her those  
24 questions, you made the decision to sign this  
25 order?

1 A. Correct.

2 Q. Why did you sign this order despite never  
3 having asked those questions of her?

4 A. Because that's what I was imposed on the  
5 case.

6 Q. For Mrs. Feenstra, you didn't consider  
7 waiving her fines, fees, and costs altogether?

8 A. No, I did not.

9 Q. Because, like you said, you've never  
10 considered doing that for any criminal defendant?

11 A. Correct.

12 Q. I'm going to show you Exhibit S. Exhibit S  
13 is the jail cost that you imposed on Mrs. Ackerson in  
14 CF 2014-465. Correct?

15 A. Correct.

16 Q. Now, is this a fair and accurate copy with  
17 your signature at the bottom?

18 A. Yes.

19 Q. It's stamped January 22nd, 2016.

20 A. Correct.

21 Q. But the date on the top is April 29th,  
22 2015.

23 A. Correct.

24 Q. Why is there that discrepancy here?

25 A. You'd have to ask Ms. Carter, who was --

1 Kristi Carter is the one that filled it out, former  
2 employee of the sheriff's office, that took months  
3 and months and months and months to get them back to  
4 court, oftentimes.

5 Q. Ultimately -- it was ultimately your  
6 responsibility to execute your judicial duties.  
7 Right?

8 A. And I did that once I came back, yes.

9 Q. How -- what is the amount that you imposed  
10 on Mrs. Ackerson in this case of jail incarceration  
11 costs?

12 A. It's \$6,916.

13 Q. So this clears the level that you said  
14 earlier would qualify as a mistake for the imposition  
15 of jail costs?

16 A. No, it's not a mistake. That's what she  
17 owed. It -- it -- it qualified (inaudible) your  
18 mistake. I'm not going to use the word mistake. It  
19 qualifies for one that I should have looked at and  
20 could have looked at and reduced.

21 Q. Mr. DeLapp, when I asked you earlier, "Did  
22 you make any other mistakes," you referenced the  
23 imposition of jail costs on defendants, and you gave  
24 us a guidepost for what you thought was a point at  
25 which the costs were too high.

1 A. Well, you used the word "mistake," and I'm  
2 telling you, if I -- those are -- you asked me to  
3 think about what I would have done differently.  
4 That's what I would have done differently.

5 Q. You should have imposed an amount lower  
6 than \$6,916 on Mrs. Feenstra for jail incarceration  
7 costs?

8 A. I should have. I could have.

9 Q. If you were recalculating this today for  
10 Mrs. Feenstra if you were still on the bench and  
11 hadn't resigned, what amount would you impose on Mrs.  
12 Feenstra of the \$6,916?

13 MR. ESSER: And this is Rick Esser. For  
14 the record, I'm going to object to the form of the  
15 question as requiring too much speculation on the  
16 part of this witness and inquiring into assumed facts  
17 about what she (sic) hasn't been asked.

18 THE WITNESS: And I -- my answer would be,  
19 I have no idea. We'd have, you know, to go back and  
20 think about what would happen if I was still on the  
21 bench.

22 BY MR. FOWLER:

23 Q. Okay. Just look at this as though you were  
24 sitting on the bench and redoing this back in 2015 or  
25 2016. What amount do you think would have been

1 appropriate for Mrs. Feenstra?

2 MR. PEDERSON: Objection.

3 THE WITNESS: I can't give you that answer  
4 because that requires me to speculate about something  
5 in the past.

6 BY MR. FOWLER:

7 Q. What do you think you did wrong then in  
8 imposing jail incarceration costs on criminal  
9 defendants that you would do differently today?

10 A. I think some are too high, and they should  
11 have been reduced. I can't say that exactly on Mrs.  
12 Feenstra, but it looks like -- I think there -- I  
13 think looking back now, some of those were too high  
14 based upon the \$38.00 a day.

15 Q. And what makes something too high?

16 A. I think I've already told you that.

17 Q. Mrs. Feenstra was not present in court when  
18 you imposed almost \$7,000 in jail costs on her?

19 A. It wasn't done in court, it was sent out  
20 from the court clerk's office to my chambers. She  
21 was not present.

22 Q. And prior to you imposing an additional  
23 \$7,000 on top of the -- if we go back to Exhibit R --  
24 I'm sorry. Could you read the total amount that you  
25 imposed on her on May --



1           A.     That's the amount, three thousand three  
2     hundred sixty -- this copy looks like a level three,  
3     sixty-three dollars. I haven't added it up, but  
4     I'll -- I take that as the amount that's written down  
5     there.

6           Q.     And Exhibit S has an amount of nearly  
7     \$7,000. So prior to imposing what's summed up to  
8     over \$10,000, had you asked any questions of Mrs.  
9     Feenstra about education or dependence or fines,  
10    fees, costs in other cases or other jurisdictions?

11          A.     No.

12          Q.     Why not?

13          A.     Because there's -- as I've said, the same  
14    answer, the system was a -- the fines and costs  
15    administrator -- they would go down there and set up  
16    a payment plan and talk about those things, and that  
17    was what the procedure was. So I did not ask any of  
18    that stuff because she -- the fines and costs were  
19    set, and, as I said, the jail incarceration fees came  
20    in later.

21          Q.     Right. So the jail incarceration is that  
22    it's a different issue than the one that you've been  
23    talking about where you're handed an amount by a  
24    clerk. Right?

25          A.     Yes.

1 Q. This was a document that was given to you  
2 by the sheriff's office?

3 A. Right.

4 Q. And the form that the sheriff's office gave  
5 you, it wasn't -- it obviously wasn't signed by you  
6 yet. Right?

7 A. No.

8 Q. Did you write in \$6,916?

9 A. No, sir, that's my bailiff Bertha Rogers'  
10 handwriting.

11 Q. What factors did you consider about whether  
12 you should sign off on jail incarceration costs when  
13 your bailiff handed you a jail incarceration cost  
14 form?

15 A. At that time, just whether it was an  
16 accurate calculation.

17 Q. But you never changed your practice; that  
18 was always how you did it?

19 A. Correct. And that's why I said if I --  
20 when you asked me if I went back in time, that's  
21 something that I would look at differently now in --  
22 in reflecting on it.

23 Q. And for these jail incarceration costs,  
24 neither your bailiff nor anybody from the sheriff's  
25 department had any sort of conversation with Mrs.

1 Feenstra about what was going to be imposed on on  
2 her?

3 MR. PEDERSON: Objection.

4 THE WITNESS: I have no idea of any  
5 conversation between the sheriff's office and Mrs.  
6 Feenstra or my bailiff.

7 BY MR. FOWLER:

8 Q. It's your understanding that bailiffs and  
9 sheriffs never had conversations with any criminal  
10 defendants about the total amount of fines he's --  
11 excuse me, about the total amount of incarceration  
12 costs that would be imposed on them?

13 MR. ESSER: And this is Rick Esser again.  
14 For the record, I would object to the nature of the  
15 question as being too -- too vague and speculative,  
16 asking never and about people who are not privy to  
17 conversations which are not privy to this particular  
18 witness.

19 THE WITNESS: I don't know what  
20 conversations occurred or happened between anybody at  
21 the jail. I know my bailiff talked to people on the  
22 phone all the time, but I have no idea about this  
23 particular case.

24 BY MR. FOWLER:

25 Q. You never told your bailiff to ask criminal

1 defendants, "Hey, how much can you pay in terms of  
2 jail costs?"

3 A. No.

4 Q. You never asked anybody at the sheriff's  
5 office to inquire of criminal defendants of their  
6 financial status or family status or health status?

7 A. No.

8 Q. Is that what you would have done  
9 differently?

10 A. Would have done differently looking at how  
11 this goes from \$3,000 to \$10,000, so I'm not sure  
12 what I would have done differently, but I would have  
13 done something differently in regard to jail  
14 incarceration fees.

15 Q. Prior to signing this document, did you  
16 open up Mrs. Feenstra's file and look back at her  
17 Affidavit of Indigency?

18 A. Yes.

19 Q. She had been appointed an OIDS attorney?

20 A. Yes.

21 Q. And you knew when you signed this that she  
22 had been appointed an OIDS attorney?

23 A. Yes.

24 Q. And when you signed this document, you made  
25 this additional nearly \$7,000 of costs a part of her

1 Judgment and Sentence?

2 A. Yes.

3 Q. I'll ask you some questions about what  
4 happened after you sentenced Mrs. Feenstra --

5 A. Okay.

6 Q. -- when she was released from the DOC. I'm  
7 going to switch over to Exhibit T. Exhibit T is Mrs.  
8 Feenstra's installment plan for her fines, fees, and  
9 costs. Right?

10 A. Yes.

11 Q. Again, that's your signature above the  
12 line, "Judge"?

13 A. That's correct.

14 Q. Does this appear to be a fair and accurate  
15 copy of the installment plan?

16 A. Yes.

17 Q. It's stamped February 22nd, 2017. Right?

18 A. Yes.

19 Q. And that's the date that appears next to  
20 Mrs. Feenstra's, then Ms. Ackerman's, signature?

21 A. Yes.

22 Q. You didn't have a hearing on February 2nd,  
23 2017?

24 A. No.

25 Q. The handwriting under the -- Mrs. Feenstra,

1 then Ackerman's, signature, none of this handwriting  
2 from addressed down to the bottom of the page sort of  
3 circling or -- none of that is your handwriting?

4 A. No, it is not.

5 Q. Who calculated the figure of zero dollars  
6 upfront?

7 A. Ms. Forbes, I believe, who signed this  
8 document.

9 Q. At this point in time, Mrs. Feenstra had  
10 been incarcerated for multiple years?

11 A. Yes.

12 Q. Because this was her visit back to the  
13 courthouse to meet with the court administrator to  
14 come up with an installment plan --

15 A. Right.

16 Q. -- right? Despite Mrs. Feenstra having  
17 been incarcerated for multiple years, why did you  
18 order a monthly sum of \$50.00?

19 A. I did not do that. I mean, obviously, this  
20 is one where the clerk's office talked to Mrs. --  
21 well, I won't speculate, but it went from normal  
22 \$75.00 to \$50.00. You'd have to ask Ms. Forbes that  
23 question.

24 Q. Mrs. Feenstra's charges were related to  
25 fraud. Right?

1 A. Hold on a second. Forgery (inaudible)  
2 theft, conspiracy, yes.

3 Q. Those are the types of charges that  
4 employers are particularly wary of hiring somebody  
5 with a history of?

6 A. Typically, yes.

7 Q. Did you take that into consideration when  
8 you signed off this order that imposed \$50.00 per  
9 month on her?

10 A. I believe she was employed at the time.

11 Q. How much was she making at the time, Mr.  
12 DeLapp?

13 A. No idea. I just know that she was  
14 employed.

15 Q. How many hours per week did she work?

16 A. No idea.

17 Q. How did you know she was employed?

18 A. It was on the form that I signed.

19 Q. But you had a conversation with Ms. Forbes  
20 about what Mrs. Feenstra had told Ms. Forbes. Right?

21 A. No, I did not.

22 Q. And what Mrs. Forbes did, didn't collect  
23 anything like weekly income or hours?

24 A. I have no idea what Ms. Forbes did as court  
25 administrator -- court costs administrator.

1 MR. PEDERSON: Injection.

2 BY MR. FOWLER:

3 Q. let me ask you this, Mr. DeLapp: Ms.  
4 Forbes never gave you a document for any criminal  
5 defendant that indicated the amount of income that  
6 they were taking home weekly?

7 A. No. The only document I got is -- from Ms.  
8 Forbes about fines and costs, is what you see in the  
9 order granting time to pay.

10 Q. At this point in time when you were signing  
11 off on this installment plan, Mrs. Feenstra's costs  
12 had exceeded -- total costs had exceeded \$10,000.

13 A. Right.

14 Q. Even though her total costs had exceeded  
15 \$10,000, you didn't decreasing -- excuse me, let me  
16 reask that.

17 Even though her total fines, fees, and  
18 costs exceeded \$10,000, you didn't consider, when you  
19 were signing this installment plan, decreasing the  
20 total amount of fines, fees, and costs that you had  
21 imposed on her?

22 A. That's correct.

23 Q. But, like you said before, you never  
24 considered decreasing the total amount of fines,  
25 fees, and costs that were imposed on any criminal



1 defendant that came before you?

2 A. Generally, no. I'm not sure never applies,  
3 but, yes, generally, no, so --

4 Q. Your general practice was to keep the  
5 amount as it was imposed plus the interest that piled  
6 up over the years?

7 A. I'm not sure we ever imposed interest, but  
8 the initial amount, yes. I don't know of any time we  
9 ever imposed interest on any -- any -- anybody, so --

10 Q. Your general practice was to keep the  
11 amount that you had originally imposed, plus, for  
12 example, jail incarceration costs?

13 A. Yes, yes.

14 Q. Who wrote in "Sigler" at the top of this  
15 document?

16 A. I assume that was also Ms. Forbes. I don't  
17 know, but that's --

18 Q. What did that "S" signify to you that Ms.  
19 Forbes wrote in "Sigler" on this judgment -- excuse  
20 me, on this installment plan?

21 A. I don't know, but -- other than it was  
22 going to be set on Judge Sigler's day. She decided  
23 to put it on Judge Sigler's day.

24 Q. Let's talk about Special Judge Sigler Did  
25 you ever talk to Spherical Judge Sigler about the

1 prior appearances of Mrs. Feenstra before you?

2 A. Not that I'm -- not that I recall, no.

3 Q. This wasn't a youthful offender case?

4 A. No.

5 Q. By your own decree, this case was getting  
6 resigned to the cost docket?

7 A. Yes, the practice was that this would go to  
8 the cost docket, yes.

9 Q. You never told Special Judge Sigler about  
10 Mrs. Feenstra's prior efforts to pay before he took  
11 over the case?

12 A. No.

13 Q. You never told Special Judge Sigler about  
14 any agreements about working at the courthouse?

15 A. I don't know of any agreements or -- for  
16 the courthouse.

17 Q. There was no recording in terms of a  
18 transcription of what happened between the cost  
19 administrator and Mrs. Feenstra. Right?

20 A. I don't believe -- not that I'm aware of,  
21 no.

22 Q. I want to ask you some questions about Mr.  
23 Sigler's role in Mrs. Feenstra's case prior to  
24 becoming the cost judge in her case. I want to go  
25 back to Exhibit Q, and I'm page one. I want you to

1 look at the first paragraph. Who was the assistant  
2 District Attorney who prosecuted Mrs. Feenstra in  
3 this case?

4 A. Jared Sigler.

5 Q. I want to show you Exhibit U. Exhibit U is  
6 a set of court minutes from March and April 2015.  
7 Correct?

8 A. Yes.

9 Q. And if you look at the top, it's from the  
10 same case number that we've been talking about?

11 A. Yes.

12 Q. This appears to be a fair and accurate  
13 copy?

14 A. As far as I can tell, yes.

15 Q. Now, at the top, it says Attorney for  
16 Plaintiffs, Jared Sigler. Right?

17 A. Yes.

18 Q. And where it says "Judge," it also says  
19 Jared Sigler?

20 A. Correct.

21 Q. Now, I want to ask you, based on these  
22 minutes, specifically April 29th, did Jared Sigler  
23 when he was the assistant District Attorney  
24 prosecuting Mrs. Feenstra, asked for fines, fees, and  
25 costs to be imposed?

1           A.     Let's see. Let me look at this a minute.  
2     So it -- it was a recommendation made by the State,  
3     and it says, Follow State's recommendation, and the  
4     court adds a \$500 fine, a \$250 VCA, \$250 OIDS fee,  
5     jail incarceration fees.

6           And so I would have to look at the actual  
7     plea of guilty, but it looks like to me reading that,  
8     he did not -- he didn't ask for fines or costs, but I  
9     added those as the court, so that -- that's what I  
10    think happened, but I haven't looked at the actual  
11    document of the Summary of Facts.

12          Q.     Let me read the document -- the minutes  
13    back to you. It reads, "State consents to probation  
14    and recommends 12 years with 6 years DOC, balance  
15    suspended, supervised probation, CFTS, F&C,  
16    restitution," period.

17          Mr. DeLapp, what does F&C mean to you?

18          A.     Fines and costs. But what's making me  
19    hesitate is where it says, Court accepts plea, finds  
20    defendant guilty as charged, follows State's  
21    recommendation and adds," so then I may be  
22    following -- usually it says the court follows a  
23    recommendation.

24          I don't know what the "adds" means -- what  
25    "adds" means. He may have very well have put -- put

1 on his recommendation of fines and costs. But I look  
2 at that -- I would like to either see -- I mean, see  
3 that transcript at that time or look at that  
4 actual -- have to look at the Summary of Facts to see  
5 what's written on that.

6 Q. When -- I'll stop sharing my screen for a  
7 moment. When ADA Sigler became Special Judge Sigler  
8 and you were the district judge for Washington  
9 County --

10 A. Yeah.

11 Q. -- did you tell Special Judge Sigler about  
12 whether he might need to recuse or disqualify himself  
13 from cases that he prosecuted?

14 A. Not that I recall.

15 Q. Did you ever train Special Judge Sigler on  
16 the judicial code of conduct and recusal  
17 and disqualification?

18 A. No.

19 Q. Did you ever train him on any other  
20 applicable statutes that might disqualify him from  
21 hearing certain cases?

22 A. I think we talked about whether or not you  
23 could -- I mean, he -- talked about he would have to  
24 determine cases that -- just like when I was on the  
25 bench, there was cases that may be prosecuted that

1 you would need to recuse some or people would ask  
2 about to recuse. I recused from some, and they would  
3 say, "Will you prosecute it," and I recused from  
4 those. But I don't specifically recall a specific  
5 conversation with him, or training.

6 Q. I'm going to show you Exhibit V (sic).

7 A. Okay.

8 Q. You see Exhibit V (sic), Section 1401,  
9 Disqualification of Trial Judge. Right?

10 A. This is Exhibit V?

11 Q. Excuse me. Exhibit W, Section 1401,  
12 Disqualification of Trial Judge.

13 A. Yes.

14 Q. And this appears to be a fair and accurate  
15 copy of the Oklahoma statute that governs  
16 disqualification of a trial judge?

17 A. Yes.

18 Q. If you look under A, it reads, No judge of  
19 any court shall sit in any cause or proceeding in  
20 which he may be interested, or in the result of which  
21 he may be interested, or when he is related to any  
22 party to said cause within the fourth degree of  
23 consanguinity or affinity, or of which he has been of  
24 counsel for either side."

25 I read that correctly, didn't I?

1 A. Yes.

2 Q. ADA Sigler had been counsel for the State  
3 of Oklahoma in Mrs. Feenstra's prosecution. Right?

4 A. Yes.

5 Q. And then Mr. Sigler presided over the case  
6 in which he had been counsel. Right?

7 A. Yes, in the fines and costs, yes, yes, on  
8 fines and costs docket, yes.

9 Q. You did that in your own practice presiding  
10 over cases that you had prosecuted?

11 A. Yes.

12 Q. Had you been trained on this statute?

13 A. Not on this particular statute. I -- like  
14 I say, I would recuse if there was an objection by a  
15 certain defendant or by counsel, but not on every  
16 case.

17 As I said, Judge Lanning was a prosecutor,  
18 Judge Lansdown was a prosecutor. The only one that  
19 was not a prosecutor prior to being on the bench was  
20 Judge Gerkin. Everybody else was a prosecutor, and  
21 so that was the practice, yes.

22 Q. Mr. DeLapp, do you know that just because  
23 people did it before you, it doesn't mean the  
24 practice was right?

25 A. That's true.

1 Q. Had you ever seen this statute before I  
2 sent it to your attorney, Mr. Esser, about a  
3 week-and-a-half ago?

4 A. Yes, I've seen the statute before.

5 Q. The remainder of Section A, which I'll  
6 highlight on the screen, is, No judge can sit in any  
7 of those causes without the consent of the parties to  
8 said action entered of record.

9 A. Okay.

10 Q. In the cases where you presided as judge  
11 and cases that you prosecuted, did you get the  
12 consent of both the defendant and the State of  
13 Oklahoma in continuing to preside over the case?

14 A. No. I mean, there were -- I would -- I  
15 would recuse from the ones they asked me to, but  
16 continued to practice of just doing fines and costs.  
17 You're talking about cases I prosecuted that become  
18 fines and costs, and my -- my only role as the judge  
19 was fines and costs; is that correct?

20 Q. I'm asking for any case. Did you preside  
21 over a case that you had prosecuted without getting  
22 the consent of the parties?

23 A. I don't -- I don't believe so.

24 Q. Well, you just said you did so for  
25 fines and costs.



1           A.    Well, I'm trying -- I'm trying to --  
2   your -- if there was a -- if there was, like, a  
3   revocation or there was something about the merits of  
4   the case, then it was -- somebody else would do that  
5   unless they consented. With us, there was a -- a --  
6   to go ahead and do that or a -- so waiver of some  
7   type, so I don't recall specific cases that happened.

8           There was some cases where I would say or  
9   someone would say, "This is the case that you had, do  
10   you want to proceed," and then we would proceed on,  
11   but I cannot tell you what cases they were.

12          Q.    You said someone might tell you this was a  
13   case you were on. Who was the someone who might tell  
14   you --

15          A.    (Inaudible) the DA's office may -- they had  
16   a file. The -- the OIDS attorney may say that or the  
17   private -- I mean, the one I'm thinking about was,  
18   Ms. Remona Colson was the attorney that I had  
19   proceeded on. She had a client, and I can't remember  
20   the client's name, and she came in and said, "Judge,  
21   you had prosecuted this person on this case," and I  
22   recused from that case, so --

23          Q.    Am I right that if an attorney did not  
24   bring this to your attention, you never disqualified  
25   yourself on a case where you had been the ADA

1 assigned who prosecuted it?

2 A. That's correct. I mean, I -- I mean,  
3 exactly in regard to fines and costs, yes.

4 Q. With that as your practice, you never told  
5 Judge Sigler that he should be checking for his own  
6 name in the case of the ADA and disqualifying himself  
7 unless he got the consent of the parties before  
8 him?

9 A. I didn't tell him that. Those -- those  
10 rules are for him to do.

11 Q. You hired Special --

12 A. That's right.

13 Q. -- Judge Sigler. He reported to you.

14 A. That's correct.

15 Q. You never trained Judge Sigler on the  
16 Constitutional requirement of recusal either?

17 A. That's correct.

18 Q. You never trained Special Justice Sigler on  
19 Williams versus Pennsylvania citation for which is  
20 136 Supreme Court 1899, which comes from the year  
21 2016?

22 A. Williams versus Pennsylvania? Is that your  
23 Exhibit FF?

24 Q. Yes.

25 A. Now, what -- what year did you say that

1 was? It was when?

2 Q. 2016 decision, Mr. DeLapp.

3 A. Okay. I thought it was a lot older than  
4 that, that's -- No, but to answer to your question,  
5 no, on that particular case, no.

6 Q. Mr. DeLapp, I'm going to show you  
7 exhibit -- actually, let me -- let me ask you that.  
8 Before I sent you and your attorney Williams versus  
9 Pennsylvania, had you ever read the opinion?

10 A. No.

11 Q. Before I sent you the Oklahoma Judicial  
12 Opinions including Dodd v. State, had you ever read  
13 those judicial opinions about judicial requirement of  
14 disqualification or recusal?

15 A. Yes.

16 Q. So you knew that Dodd v. State held, quote,  
17 A district judge who, prior to his election as such,  
18 was county attorney and participated in the  
19 prosecution of a criminal action as such county  
20 attorney, is disqualified to sit in the trial of such  
21 case as judge and to make any order in the case  
22 whatever, except that showing his disqualification.

23 A. Yes.

24 Q. You knew that was the state of the law when  
25 you were a judge?

1 A. I knew that you had to recuse from a case  
2 if you had set enough cases unless there was consent  
3 or waiver, yes.

4 Q. And you still presided over cases where  
5 there was no consent or waiver where you had been the  
6 ADA?

7 A. Yes.

8 Q. I want to ask you about the OIDS attorneys  
9 who appeared in front of you.

10 A. Okay.

11 Q. I want to start off with Ms. Carter's OIDS  
12 attorney. Did Ms. Carter's OIDS attorney ask you to  
13 waive Ms. Carter's fines, fees, and costs in their  
14 entirety?

15 A. Ms. Carter's was Kristi Sanders? No.

16 Q. Did Ms. Carter's OIDS attorney ask you to  
17 reduce the total amount of fines, fees, and costs?

18 A. No.

19 Q. Did Ms. Carter's OIDS attorney make any  
20 arguments to you about Ms. Carter's age or education  
21 or job status?

22 A. In regards to fines and costs? No.

23 Q. Did you ever cut off Ms. Carter's OIDS  
24 attorneys from making arguments to you about the  
25 propriety of fines, fees, costs, or --

1 A. No.

2 Q. -- anything else? Did you ever threaten  
3 Ms. Carter's OIDS attorney for making arguments about  
4 any waiver or reduction of costs?

5 A. No.

6 Q. Did Ms. Carter's OIDS attorney ever ask you  
7 to schedule a hearing, not a meeting with a cost  
8 administrator, after Ms. Carter was released to  
9 determine the appropriate total amount or installment  
10 plan for her fines, fees, and costs?

11 A. No.

12 Q. Have you ever seen an OIDS attorney at a  
13 fines, fee, cost review hearing?

14 A. Not for fines and costs cases, no.

15 Q. And you've never appointed an OIDS attorney  
16 at a fines, fees, and cost review hearing?

17 A. No.

18 Q. For Mrs. Feenstra, did her OIDS attorney  
19 ask for her fines, fees, and costs to be waived in  
20 their entirety?

21 A. No.

22 Q. For Mrs. Feenstra, did her OIDS attorney  
23 ask for the total of fines, fees, and costs to be  
24 reduced some amount below \$10,000?

25 A. No.

1 Q. Did Mrs. Feenstra's OIDS attorney ever make  
2 arguments to you about Mrs. Feenstra's education or  
3 job status or physical or mental status?

4 A. No.

5 Q. Did you ever cut off Mrs. Feenstra's OIDS  
6 attorney from making arguments about reduction of  
7 fines, fees, or costs?

8 A. No.

9 Q. Did you ever cut off Mrs. Feenstra's OIDS  
10 attorneys from making any arguments at all?

11 A. Not that I recall.

12 Q. Did Mrs. Feenstra's OIDS attorney ever ask  
13 for a hearing where her ability to pay would be  
14 determined by you and not through a meeting with the  
15 cost administrator in the courthouse?

16 A. No.

17 Q. Has any OIDS attorney who has ever appeared  
18 in front of you ever asked for fines, fees, and costs  
19 to be waived in their entirety?

20 A. I think it -- there has been occasions  
21 where they asked that the fine be suspended, but not  
22 in entirety that I recall.

23 Q. And your belief is you can't waive fines,  
24 fees, costs in their entirety. Right?

25 A. That's my understanding.

1 Q. You've seen OIDS attorneys since resigning  
2 at the courthouse arguing on behalf of their  
3 clients?

4 A. I've seen them at the courthouse, yes.

5 Q. Arguing on behalf of their clients in  
6 Washington County?

7 A. Yes, in preliminary hearings, yes.

8 Q. You've watched OIDS attorneys at  
9 sentencings?

10 A. Not really, no.

11 Q. You've never seen --

12 A. Not since I retired, no.

13 Q. And have you appeared at any cost dockets  
14 since resigning from the bench?

15 A. No.

16 Q. At sentencing, you never gave criminal  
17 defendants an option to choose between community  
18 service or fines, fees, and costs?

19 A. Correct. I think I've already answered  
20 that, correct.

21 Q. You said that you did give community  
22 service to some individuals, or at least you  
23 considered community service for some individuals, on  
24 whom you had imposed fines, fees, and costs.  
25 Right?

1 A. Correct.

2 Q. How did you determine how much community  
3 service was sufficient to pay off a certain amount of  
4 fines, fees, and costs?

5 A. I would think -- what I -- what I  
6 understand is, is -- and I -- and I've done this,  
7 too -- if you're a trustee in the county jail, they  
8 got \$25.00 a day towards the -- as opposed to \$5.00 a  
9 day, I think it was \$25.00. And that would be what I  
10 would say, like, \$25.00 a day based upon working like  
11 they would as a trustee. I think that's right,  
12 \$25.00 a day. It's been a while since I've thought  
13 about that, but --

14 Q. You're saying that for individuals who  
15 wanted to do community service or individuals to whom  
16 you offered community service, you would give them  
17 the credit of \$25.00 a day?

18 A. I think that's right. I mean, I  
19 think that's -- I don't recall. I think that's what  
20 I remember thinking of doing that in regard to what  
21 was done in the jail.

22 Q. Uh-huh.

23 A. Think it was \$25.00 a day. It's been a  
24 while, so --

25 Q. So let's assume eight hours of work in a



1 day, okay, Mr. DeLapp?

2 A. Sure.

3 Q. You're saying that you were crediting  
4 people for about \$3.00 an hour for community service  
5 when they were not incarcerated, when they were out  
6 in the community?

7 A. Yes, that would be -- yes, as opposed to  
8 \$5.00 a day (inaudible) other things, yes.

9 Q. How did you come up with that conversion?

10 A. I think it was a statute that says there --  
11 and it's been a while. There's a statute -- or --  
12 that says if they do certain work as a trustee, they  
13 can get \$25.00 a day. I think that's correct, \$25.00  
14 a day. So -- if they're a trustee, so --

15 Q. As a percentage of all -- and you were  
16 never giving this option to people at sentencing.  
17 Right?

18 A. No, correct. It was later on -- you know,  
19 it was later on, yes.

20 Q. So for the folks that you gave this  
21 opportunity to at the cost dockets, what percentage  
22 of all the individuals who appeared before you at the  
23 cost dockets did that set of people make up?

24 A. A very low percentage.

25 Q. Less than one percent?

1 A. Around -- probably around one percent,  
2 yeah, exactly.

3 Q. I'm sorry. Repeat your answer.

4 A. Around one percent probably, yes, or less  
5 than that, yes; not very often.

6 Q. And what made you offer community service  
7 where you'd be making about \$3.00 an hour to some  
8 people, one percent or less of the folks who came  
9 before you?

10 A. Usually we had a discussion about they  
11 wanted to -- they wanted to trade trade out community  
12 service for their fines and costs, so --

13 Q. I see. So the criminal defendants would  
14 have to suggest community service for you to consider  
15 it?

16 A. Yes, or their -- yeah, exactly, yes.

17 Q. As a general practice, you wouldn't  
18 consider community service as an alternative unless  
19 the criminal defendant or their attorney suggested it  
20 to you?

21 A. Correct.

22 Q. You mentioned that at the cost dockets, you  
23 would often tell folks that they had to sit in the  
24 jury box and that they would have until a certain  
25 time in the day to make the payment or they would be

1 remanded. Right?

2 A. We usually let them make phone calls or get  
3 some -- get some kind of deal or if they -- even if  
4 they were taken to either the court, to the jail, if  
5 they -- somebody called on their behalf, I would say,  
6 "If you can pay this, then you can be released," yes.

7 Q. You would keep folks in your courtroom and  
8 tell them that they had to cough up the money before  
9 a certain time?

10 A. I would ask them if they could come up with  
11 some payments, yes, and sometimes they -- if they  
12 could pay anything, yes, I would keep them in the  
13 courtroom.

14 Q. So you wanted people to bring money to the  
15 courthouse while you were keeping them in your  
16 courtroom?

17 A. Yeah. I wanted somehow to get them --  
18 sometimes I'd let them go and come back at a later  
19 time that day or -- but a lot of time it was like  
20 somebody was with them or had someone they could  
21 contact to -- I let people make phone calls with  
22 their cell phones or text people to see if they can  
23 come up with some money to pay.

24 Q. On most occasions, it was other people who  
25 were bringing money in for the criminal defendant.

1 Right?

2 A. Yes.

3 Q. On most occasions, it wasn't the criminal  
4 defendants' own money that was paying off the fines,  
5 fees, or costs?

6 A. I don't know. I don't know that. I don't  
7 know whose money it was. I just know money was  
8 paid.

9 Q. Why did you think that a friend paying off  
10 a fine, fee, or cost advanced the sentencing goals  
11 you had when you imposed the fine, fee, and cost on  
12 the criminal defendant?

13 A. I don't understand that question.

14 Q. What are the goals of sentencing?

15 A. Well, there's deterrents; there's  
16 retribution; there's different -- rehabilitation, and  
17 those are sentencing. (Inaudible) in this particular  
18 case, there's assessment of a fine that needs to be  
19 paid.

20 Q. A fine is part of the sentence.

21 A. Correct.

22 Q. So what was your goal in imposing a fine on  
23 criminal defendants?

24 A. It's part of their punishment in the case.  
25 I mean, that's -- I mean, I guess that's -- to -- and

1 to -- and to -- to -- for fines, yes. That's part of  
2 that range, yes.

3 Q. How did a friend paying off somebody's fine  
4 operate toward the goal of punishment that you  
5 identified as your goal in imposing fines on criminal  
6 defendants?

7 A. Not sure that is something that I can  
8 answer, so --

9 Q. Is it fair to say that actually doesn't  
10 achieve the goal of punishment, by having a friend to  
11 pay a fine or cost?

12 A. I mean, I -- I don't -- I wouldn't agree  
13 with that, but you can say that.

14 Q. How would you characterize it?

15 A. Well, I'm -- I've -- I've answered the  
16 (inaudible), so I'm not going to answer it any  
17 further that, so -- that goes into, you know, what  
18 I -- what I consider at those times, but -- okay?

19 Q. I want to ask you some questions about Rule  
20 8 in particular because you've expressed on a number  
21 of occasions your belief or your understanding about  
22 the practice of how things work. I want to show you  
23 first -- it will be Exhibit X.

24 A. Okay.

25 Q. Bear with me while I load this up. I'm

1 going to share my screen with you now. Can you see  
2 Exhibit X now?

3 A. Yes.

4 Q. That's Rule 8.1 relating to judicial  
5 hearings.

6 A. Yes.

7 Q. This appears to be a fair and accurate copy  
8 of the statute relating to judicial hearings?

9 A. Yes.

10 Q. Rule 8.1 reads, When the Judgment and  
11 Sentence of a court, either in whole or in part,  
12 imposes a fine and/or cost on a defendant, a judicial  
13 hearing shall be conducted and judicial determination  
14 made as to the defendant's ability to immediately  
15 satisfy the fine and costs. I read that correctly?

16 A. Yes.

17 Q. Rule 8.1 requires a judicial hearing on a  
18 defendant's ability to immediately pay, not a meeting  
19 with a cost administrator.

20 A. It -- it says a judicial hearing, yes.

21 Q. You did not conduct judicial hearings as to  
22 a defendant's ability to immediately satisfy the  
23 fines and costs; instead you sent the person to the  
24 cost administrator.

25 A. Correct.

1 Q. Why did you do that?

2 A. As I previously stated, prior to the  
3 imposition of the court administrator, the -- excuse  
4 me, the court cost administrator, the judges did  
5 that. And then when the court administrator -- when  
6 the AOC, (inaudible) the court cost administrator, it  
7 was sending them to that -- defendants to that -- to  
8 them to determine that or to have the hearing or the  
9 meeting or whatever the word is.

10 I think that took place of the hearing --  
11 took -- it took place or became an administrative  
12 kind of determination that the court then reviewed  
13 and signed, so that's what happened.

14 Q. That process does not comply with Rule 8.1.

15 A. That's open to argument, I guess.

16 Q. Well, argue it to me then.

17 A. Well, I assume there's other -- other  
18 situations where you would go to child support or  
19 someplace or bankruptcy, and there was a -- you go in  
20 to an administrator or a court, a -- a person to do  
21 some -- do the paperwork. The judge reviews that,  
22 and those questions are asked.

23 So when there's an administrative hearing  
24 or -- you know, that's the argument. I'm not saying  
25 that's my argument, but that's an argument you could

1 think of, so --

2 Q. On its face, it doesn't look like  
3 the practices of Washington County judges; both yours  
4 and your colleagues were complying with Rule 8.1 in  
5 terms of a judicial hearing as to ability to  
6 immediately satisfy fine and costs.

7 A. That's correct. There was no actual  
8 judicial hearing in front of a judge, yes.

9 Q. And a judicial hearing can only happen in  
10 front of a judge?

11 A. Well, I mean, I don't know -- I don't know  
12 the answer to that question, whether you can do a  
13 hearing and then the judge adopts that outside  
14 that -- I don't know. But in this case, it was not  
15 done in front of a judge.

16 Q. And you never had any sort of hearing after  
17 the cost administrator had the meeting in determining  
18 the total amounts of fines, fees, and costs to be  
19 imposed. Right?

20 A. That's correct.

21 Q. Like you said, you were sitting in chambers  
22 when a stack of documents for your signature would  
23 show up?

24 A. That's correct.

25 Q. For Ms. Carter, you imposed a Judgment and



1 Sentence order. Right?

2 A. Correct.

3 Q. For Mrs. Feenstra, you imposed a Judgment  
4 and Sentence order. Right?

5 A. Correct.

6 Q. For neither of the two women did you  
7 conduct a judicial hearing either immediately or  
8 anytime after?

9 A. That's been asked and answered, yes.

10 Q. You've been an attorney, Mr. DeLapp, and  
11 Mr. Esser, I think, is well-qualified to make  
12 objections on your behalf.

13 A. Okay.

14 Q. I want to ask you about Exhibit AA.

15 A. Okay.

16 Q. This is Rule 8.5, inability to pay  
17 installments because of physical disability or  
18 poverty. Correct?

19 A. Yes.

20 Q. That appears to be a fair and accurate  
21 depiction of the statute that governs this subject?

22 A. Yes.

23 Q. And Rule 8.5 reads, "In the event the  
24 defendant, because of physical disability or poverty,  
25 is unable to pay fine and/or costs either immediately

1 or in installment payments, he or she must be  
2 relieved of the fine and/or costs, or, in the  
3 alternative, be required to report back to the court  
4 at a time fixed by the court to determine if a change  
5 of condition has made it possible for the defendant  
6 to commence making installment payments toward the  
7 satisfaction of fine and/or costs."

8 I've read that correctly?

9 A. Yes.

10 Q. You never relieved any criminal defendant  
11 in your 15 years on the bench of his or her fines,  
12 fees, and costs in their entirety?

13 A. Correct.

14 Q. Are you aware of any of your colleagues  
15 while you were on the bench ever doing that?

16 A. I'm not aware of that, no. They may have.  
17 I'm -- I'm not aware of that.

18 Q. I want to ask you a little bit about  
19 record-keeping and the maintenance of records  
20 concerning the hearings that you presided over when  
21 you were on the bench. I'm going to show you Exhibit  
22 Z, which is Rule 8.4, failure to make installment  
23 payments when due. Do you see that on the screen?

24 A. Yes.

25 Q. Fair and accurate copy of the statute that

1 governs this subject?

2 A. It appears so, yes.

3 A. Rule 8.4 reads, "If the defendant fails to  
4 make an installment payment when due, he or she must  
5 be given an opportunity to be heard as to the refusal  
6 or neglect to pay the installment when due. If no  
7 satisfactory explanation is given at the hearing on  
8 failure to pay, the defendant may then be  
9 incarcerated.

10 "If a defendant has the ability to pay but  
11 due to exigent circumstances or misfortune fails to  
12 make a payment of a particular installment when due,  
13 he or she may be given further opportunity to satisfy  
14 the fine and/or costs at the discretion of the court  
15 to be governed by the facts and circumstances of each  
16 particular case."

17 I read that correctly?

18 A. That's correct.

19 Q. Ms. Carter's hearing where you issued your  
20 incarceration order, your remand order, that was an  
21 example of a hearing on failure to pay?

22 A. Yes.

23 Q. The hearing that you conducted where you  
24 issued Ms. Carter's remand order was conducted  
25 pursuant to Rule 8.4?

1 A. Yes.

2 Q. I'm going to show you Exhibit BB as in boy.  
3 That's Rule 8.7, "Court reporter; judicial order  
4 reduced to writing and filed of record; contents of  
5 order."

6 This appears to be a fair and accurate copy  
7 of the statute that governs this subject. Right?

8 A. Yes.

9 Q. I'm just going to read to you the first  
10 sentence. "A court reporter shall be present and  
11 report all such judicial hearings required by the  
12 section, provided, however, a court reporter is not  
13 required to be present if the proceedings were  
14 observed in accordance with Section 106.4(a) of Title  
15 20."

16 I read that portion correctly?

17 A. Yes.

18 Q. Going from that period where you issued  
19 your remand order for Ms. Carter, there was no  
20 corporate order present during the hearing when you  
21 issued the order?

22 A. That's correct.

23 Q. The hearing was not electronically recorded  
24 either?

25 A. Correct.

1 Q. You never had a court reporter present for  
2 any cost docket hearing. Right?

3 A. That's correct, that's correct.

4 Q. You never had an electronic recording for  
5 any such hearing either?

6 A. That's correct.

7 Q. I want to show you the statute that is  
8 cross-referenced by Rule 8.7. Give me one moment  
9 while I pull up these exhibits. I'm sharing my  
10 screen again. Up before you should be Section 106.4,  
11 (")Duties of Reporter--Methods--Transcripts.  
12 Do you --

13 A. Okay.

14 Q. Is it CC in front of you?

15 A. I can see it, yes.

16 Q. I'm going to scroll down to the bottom of  
17 the two pages. Does that appear to be a fair and  
18 accurate copy of the statute that governs this  
19 subject?

20 A. Yes.

21 Q. Section A of 106.40 requires that a "court  
22 reporter shall make a full reporting by means of  
23 stenographic hand, steno-mask or machine notes, or a  
24 combination thereof, of all proceedings, including  
25 the statements of counsel and the court and the

1 evidence, in trials and other judicial proceedings to  
2 which the court reporter is assigned by the  
3 appointing judge, unless excused by the judge who is  
4 trying the case with the consent of the parties to  
5 the action."

6 I read that correctly. Right?

7 A. Correct.

8 Q. When you were district judge, were you the  
9 appointing judge for all court reporters in the  
10 courthouse?

11 A. I hired -- I think I hired one part-time.  
12 The -- I was over them, but I didn't hire -- they  
13 were already there when I went from associate to  
14 district. And unless they retired, then there was a  
15 hiring -- I think there was a -- no, I hired one, and  
16 then there was a part-time, so -- some of them were  
17 already there.

18 I didn't -- yes, and didn't -- only had two  
19 for a long time, and then they got a part-time one.  
20 So, yes, some of them were already there when I went  
21 from associate to district.

22 Q. I'm going to read to you the final four  
23 sentences of this subsection. "The court reporter  
24 may use an electronic instrument as a supplementary  
25 device. In any trial, hearing or proceedings, the

1 judge before whom the matter is being heard may,  
2 unless objection is made by a party or counsel, order  
3 the proceedings electronically recorded.

4 "A trial or proceedings may proceed without  
5 the necessity of a court reporter being present,  
6 unless there is objection by a party or counsel.  
7 Provided that if an official transcript is ordered,  
8 then it shall be prepared by the official court  
9 reporter."

10 I read that correctly, didn't I?

11 A. Yes.

12 Q. You never asked to have a court reporter  
13 assigned to the cost docket hearings over which you  
14 presided?

15 A. That's correct.

16 Q. You never asked to have a court reporter  
17 assigned to the cost dockets that any special judges  
18 presided over?

19 A. Correct.

20 Q. Despite not having a court reporter  
21 present, you never asked any criminal defendant if  
22 they consented to a proceeding without a court  
23 reporter?

24 A. Correct.

25 Q. And you never told Special Judge Sigler or

1 any other special judge that they should be inquiring  
2 of criminal defendants if they want to have or waive  
3 a court reporter. Right?

4 A. Correct.

5 Q. Those criminal defendants, even if they  
6 waived their right to a court reporter, they have the  
7 right to have that proceeding electronically  
8 recorded?

9 A. That's what it says, yes.

10 Q. You never made any provisions for an  
11 electronic recording for the hearings for criminal  
12 defendants who made a valid, on-the-record waiver of  
13 their right to a court reporter?

14 A. Correct.

15 Q. Have you walked into a courtroom where the  
16 cost docket is being conducted since you left the  
17 bench?

18 A. No.

19 Q. Give me one moment. While I pull up this  
20 next exhibit, Mr. DeLapp, the functional result of  
21 your decision not to appoint a court reporter and not  
22 to require an electronic recording is that there is  
23 no real record of the vast majority of the cost  
24 dockets that you or your colleagues presided over.  
25 Right?



1 A. Right.

2 Q. All that we're left with is the form that  
3 you filled out. Correct?

4 A. Yes, the form or any minutes that are on  
5 the docket, yes.

6 Q. And as we saw for Ms. Carter, there was no  
7 record of any questions or answers that you posed or  
8 that she gave you?

9 A. Correct.

10 Q. And that was your practice not to record  
11 questions or answers or facts that were developed  
12 through the judicial hearing over which you were  
13 presiding?

14 A. Correct. I've never seen that put on the  
15 form here in Washington County, yes.

16 Q. Did you develop the form in Washington  
17 County?

18 A. No.

19 Q. Did you revise it?

20 A. Well, might have revised --

21 Q. Say that again.

22 A. I said it might have been revised, but I  
23 don't recall.

24 Q. Have you seen the statute that I just  
25 showed you about a court reporter being present and

1 an electronic recording as a backup if there's a  
2 waiver? Have you seen that statute before?

3 A. I saw it -- I -- I saw it in the exhibits,  
4 yes.

5 Q. You saw --

6 A. It was 1991 when I started at the  
7 courthouse. I've never seen a court reporter who had  
8 a -- any type of at any type of fines and cost  
9 determination or -- or remand, court reporter there,  
10 so -- I haven't seen that.

11 Q. You agreed with me earlier that just  
12 because somebody made a mistake before you, doesn't  
13 mean you should keep repeating that mistake when you  
14 become the most senior judge in a courthouse. Right?

15 A. Agree with that, yes.

16 Q. So when you were elevated to district  
17 judge, did you look over statutes that govern your  
18 responsibilities or review Rules 8.1 to 8.7 to get  
19 yourself familiar?

20 A. No.

21 Q. Did you ask -- when you assigned Judge  
22 Sigler to the cost docket, did you ask him to look  
23 over just Rules 8.1 to 8.7 to get himself up to  
24 speed?

25 A. I don't believe so.

1 Q. You had the capability of electronically  
2 recording a hearing. Right?

3 A. I think there was tape recorders in there,  
4 yes.

5 Q. What were the tape recorders used for?

6 A. The court reporters used the tape recorders  
7 as a backup to their taking dictation, and then -- so  
8 there was actually tape recorders in there. I never  
9 used tape -- the court reporters would use the tape  
10 recorders and tape-record what was being said, so I  
11 guess when they went back, they'd listen to them and  
12 do the record correctly. Yeah, there was tape  
13 recorders in there.

14 Q. If there was a court reporter in there?

15 A. No, tape recorders were always in there no  
16 matter what. They were in there in the courtrooms  
17 whether there was a court reporter or not. They just  
18 weren't used by anyone but the court reporters.

19 Q. I see. You never made the decision to just  
20 pick up the tape recorder or have your bailiff pick  
21 up the court reporter -- excuse me, court --  
22 recording device and just hit record?

23 A. No.

24 Q. And you never told Special Judge Sigler,  
25 "Hey, just hit record when you step on and stop it

1 when you step off so we have a record to keep us in  
2 compliance with Rule 8.7 and the other governing  
3 statutes"?

4 A. No, I did not.

5 Q. I want to show you Exhibit A again. Again,  
6 Exhibit A, in Section 1983a -- excuse, me, I keep  
7 misstating that -- Section 983a, authority to waive  
8 fines, costs and fees. This is a fair and accurate  
9 copy of the statute that governs this subject.

10 Right?

11 A. Yes, yes.

12 Q. You said that you never knew about this  
13 statute when you were on the bench. Right?

14 A. I've read it, and I -- I was not aware -- I  
15 knew that you could waive stuff, but I wasn't aware  
16 of the specific statute, I mean, especially the 24  
17 months following, I don't remember recall that --  
18 every reading that or discussing that.

19 Q. And you had said previously, you expressed  
20 your belief that you could not completely reduce a  
21 person's fines, fees, or costs. Right? You believe  
22 that was beyond your authority?

23 A. Well, I said --

24 Q. Could you just answer my question, Mr.  
25 DeLapp?

1 A. No, that's not what I said.

2 Q. Can you read for me capital letter A?

3 A. Yeah. On or after November 1st, the court  
4 shall have the authority to waive all outstanding  
5 fines, court costs and fees in a criminal case for  
6 any person who --

7 Q. So while you were on the bench presiding  
8 over cases, you had the authority to completely waive  
9 a person's Fines, costs, and fees. That was the  
10 state of the law whether you knew it or not.

11 A. It was 2000 -- November 1st, 2016, yes.

12 Q. You didn't resign until 2018?

13 A. That's correct.

14 Q. How many criminal defendants' cases do you  
15 think you presided over during the time period of  
16 November 1st to when you resigned?

17 A. I have no idea.

18 Q. Give me one second. Let me see if we can  
19 take a look at Exhibit DD as in dog. This is Section  
20 983b, "Released persons--Hearing to determine ability  
21 to pay fines, costs and fees."

22 This is a fair and accurate copy of the  
23 statute that governs the subject, Mr. DeLapp?

24 A. Yes.

25 Q. This is the statute that has the 180 days.

1 Right?

2 A. This is the statute I was referring to  
3 that -- that I -- that -- but I don't know if it was  
4 from Judge Sigler or from the clerk's office, because  
5 we became aware of this statute, and really quite  
6 surprised this statute was actually in effect, and  
7 there would be six months, 180 days, from release to  
8 do that. So, yes, I -- this is the statute we were  
9 talking about.

10 Q. And this is a -- I don't know whether I  
11 asked you this question. This is a fair and accurate  
12 depiction of the statute that governs this subject?

13 A. Yes, it is.

14 Q. Can you read me the effective date at the  
15 bottom of the statute?

16 A. It's November 1st, 2016.

17 Q. Okay. So 983b was passed -- and I'm going  
18 to switch over to Exhibit A -- on the same day as  
19 983a. Correct?

20 A. They became effective on the same day or --  
21 yes, they were effective on the same day.

22 Q. Okay. I'm going to switch back to DD,  
23 Section 983b.

24 A. Okay.

25 Q. You had testified that you told individuals

1 to come back to the courthouse after they were  
2 released from incarceration to meet with the cost  
3 administrator. Right?

4 A. Yes. I believe the J&S's, some were 48  
5 hours and some were 72 hours. I'm not really sure  
6 why the difference was, but would come back within 72  
7 hours, yes.

8 Q. To meet with the cost administrator.  
9 Right?

10 A. Correct.

11 Q. Okay. And that's what you pulled Ms.  
12 Carter and Mrs. Feenstra to meet with the cost  
13 administrator?

14 A. That's what would be in their orders, yes,  
15 I guess.

16 Q. I want to read to you from capital A going  
17 to the section after 2. Quote, any person released  
18 on parole or released without parole from a term of  
19 imprisonment with the Department of Corrections shall  
20 be required to report at a time not less than 180  
21 days after his or her release from the Department of  
22 Corrections, to -- I'm going to jump down -- for the  
23 purpose of scheduling a hearing to determine the  
24 ability of the person to pay fines, fees, costs, or  
25 assessments owed by the person.

1 I read that correctly. Right?

2 A. Yes.

3 Q. And it continues to encompass every case  
4 across the State of Oklahoma. If I continue reading,  
5 it says, quote, in every felony or misdemeanor  
6 criminal cases filed in a district court or criminal  
7 case filed in municipal court of this state.

8 I read that correctly. Right?

9 A. Yes.

10 Q. So the requirement from November 1st onward  
11 of 2016 was for you to schedule a hearing to  
12 determine ability to pay for folks who were  
13 incarcerated. Right?

14 A. Yeah, people that were released from  
15 incarceration, yes.

16 Q. You said when I showed you the notice from  
17 DOC, "Well, DOC seemed to think that was okay."

18 A. No, I just said that's what their language  
19 was. I mean, I don't know where that point came  
20 from.

21 Q. What made you think that your instructions  
22 to criminal defendants on the judgment & sentencing  
23 order or otherwise were correct?

24 A. Again, that's what we've all -- had always  
25 done prior to -- well, that's what we always --



1 that's what we always done, (inaudible) 72 hours,  
2 so -- typically.

3 Q. Well, I'm not talking about time frames  
4 right now. I'm talking about the difference between  
5 a judicial hearing and a meeting. You agree with me  
6 this statute requires a hearing, not a meeting.  
7 Right?

8 A. Yes. It says hearing, yes.

9 Q. Okay. I want -- I want to be sure about  
10 that, and I want to read to you capital letter D --  
11 excuse me, B as in boy: "In determining the ability  
12 of a person to satisfy fines, fees, costs, or  
13 assessments owed to district or municipal court, the  
14 court shall inquire of the person at the time of the  
15 hearing which counties and municipalities the person  
16 owes fines, fees, costs, or assessments in every  
17 felony or misdemeanor criminal case filed against the  
18 person, and shall consider all court-ordered debt,  
19 including restitution and child support, in  
20 determining the ability of the person to pay."

21 Did I read that correctly?

22 A. Yes.

23 Q. Can you show me anywhere in this statute  
24 where it says a cost administrator can substitute in  
25 for a statutory role of the court?

1 A. It doesn't say that.

2 Q. Your practices from November 1st, 2016,  
3 were not in compliance with 983b for individuals who  
4 were released from a term of imprisonment from the  
5 DOC?

6 A. Correct.

7 Q. You have no indication that the practices  
8 of the Washington County judges today are any  
9 different in directing a person to a cost  
10 administrator as opposed to a judge who has the  
11 statutory job of determining ability to pay?

12 A. That (inaudible) -- yeah, I have no -- I  
13 don't have any idea what someone -- what they're  
14 doing at this point in time.

15 MR. FOWLER: Stopped sharing my screen and  
16 suggest we take a 15-minute break here, so maybe we  
17 come back at 2:10. Does that work for folks?

18 THE COURT REPORTER: Uh-huh.

19 THE WITNESS: Yes.

20 THE VIDEOGRAPHER: We're going off the  
21 record at 1:54 p.m.

22 (Recess taken 1:54 p.m. - 2:09 p.m.)

23 THE VIDEOGRAPHER: We're back on the record  
24 at 2:09 p.m.

25 BY MR. FOWLER:

1 Q. Mr. DeLapp, I want to ask you again about  
2 Mrs. Feenstra's case and the court minute that you  
3 looked at a moment ago, so I'm going to share my  
4 screen again --

5 A. Okay.

6 Q. -- to get it to you. Can you see Exhibit U  
7 come up on the screen now?

8 A. Yes.

9 Q. These are the court minutes from March and  
10 April 2015 for Mrs. Feenstra?

11 A. Yes.

12 Q. I want to show you at the end this line  
13 under April 29th, 2015. It reads, "Attorney allowed  
14 to withdraw."

15 Do you see that?

16 A. Yes.

17 Q. What does that indicate to you that the  
18 minutes reflect that the attorney for Mrs. Feenstra  
19 was allowed to withdraw?

20 A. That that OIDS attorney is no longer  
21 required to be in the case.

22 Q. The attorney requested to withdraw, and you  
23 judicially approved the request. (Inaudible) sharing  
24 my screen here.

25 THE COURT REPORTER: I'm sorry. You really

1 broke up on that part, what you were --

2 BY MR. FOWLER:

3 Q. As a general practice across the cases,  
4 appointed OIDS or a colleague had a -- I'm sorry.  
5 Let me ask that again.

6 MR. FOWLER: You were talking to me.  
7 Right?

8 THE COURT REPORTER: Yes, sir.

9 MR. FOWLER: Can you hear me now?

10 THE COURT REPORTER: Yeah, it's -- it's a  
11 little bit cutting in and out, but we'll try again.  
12 Just keep going. I'll let you know.

13 MR. FOWLER: Okay. Be one second. I'll  
14 play with the one setting.

15 Okay. We'll see if that does us better.

16 BY MR. FOWLER:

17 Q. So Mr. DeLapp, was it the general practice  
18 of OIDS attorneys who appeared before you to ask to  
19 withdraw at the sentencing hearing?

20 A. Yes.

21 Q. Mrs. Feenstra's attorney on that sentencing  
22 on April 29th, 2015, did that attorney ask for the  
23 imposition of the OIDS fee on Mrs. Feenstra?

24 A. It was usually just assessed if there was  
25 an OIDS attorney involved. Sometimes -- sometimes --

1 I can't -- specifically in this case, I don't  
2 remember. But sometimes they ask for it, and  
3 sometimes it was just imposed if there was a -- but  
4 sometimes I would say, "I'm going to impose an OIDS  
5 fee on this case," and they would say, No, Judge, I'm  
6 hired on this case," so then it wasn't imposed.

7 So -- I just knew there was three OIDS  
8 attorneys, and so sometimes we'd need -- I'd -- I'd  
9 try to determine which one they were hired on and  
10 which one they were appointed on, so -- but in this  
11 case, I don't recall if that's something that was  
12 asked by Ms. Branstetter or whether that was just  
13 something that was done as a normal course of there's  
14 an OIDS fee involved.

15 Q. So the general practice, you would try to  
16 impose the OIDS fee --

17 A. Oh, yeah.

18 Q. -- when --

19 A. Yeah.

20 Q. -- you thought it was a court-appointed  
21 case?

22 A. Yes.

23 Q. For the times when you just forgot or got  
24 it wrong, was it the general practice of the OIDS  
25 attorneys to request that you impose the OIDS fee on

1 their client?

2 A. If there was -- if I did it wrong, they  
3 would say, "Judge, this is not an OIDS case," and so  
4 then I would not impose it.

5 Q. Have you ever had it wrong the other way  
6 where you neglected to impose it and the OIDS  
7 attorney said, "Judge, this is an OIDS case, please  
8 impose the OIDS fee"?

9 A. I think that's probably happened, yes.

10 Q. Did Mrs. Feenstra's attorney at sentencing  
11 ask for a waiver or a reduction of the OIDS fee?

12 A. Not that I recall, no.

13 Q. As a general practice, did the OIDS  
14 attorneys who appeared in front of you ask for a  
15 waiver or reduction of the OIDS fee?

16 A. No, not as a general practice, no.

17 Q. Can you remember any hearing as a judge or  
18 as an attorney in the Washington County Courthouse  
19 where an OIDS attorney asked for a waiver or  
20 reduction of the OIDS fee?

21 A. I recall Mr. Kane asking that once or  
22 twice, you know, that he would proceed on a case,  
23 waive a -- you know, proceed on -- maybe if there was  
24 more than a couple -- maybe he was (inaudible)  
25 representing somebody as an OIDS attorney and not

1 have an OIDS fee in a case, or just asked that to be  
2 waived.

3 But he's the only one that I can think of  
4 on a couple of occasions where he was asking to waive  
5 or forego an OIDS fee. But most of the time they ask  
6 for or he was given an OIDS fee.

7 Q. I see. So the general practice for the  
8 OIDS attorneys was not to ask for a waiver or  
9 reduction of the OIDS fee?

10 A. Correct.

11 Q. As a defense attorney, Mr. DeLapp, if you  
12 had a client as you were preparing for a sentencing  
13 and you knew that client's fees and costs would be an  
14 issue that might be imposed on your client, would you  
15 ask for a waiver or reduction of the total amount of  
16 fines, fees, and costs on behalf of your representing  
17 your client?

18 A. I haven't done that, but usually there's an  
19 agreement that's made, but -- with the State. They  
20 give you a plea bargain with what they're doing, but  
21 giving that in these statutes, I may start doing  
22 that, yes.

23 Q. So if you had a client who could afford you  
24 but still wasn't the wealthiest man or woman in the  
25 world, am I right that you would go in with an

1 argument to ask the judge to impose as little of a  
2 fine, fee or cost as possible?

3 A. Yes, I -- I believe I could do that. Now,  
4 you understand in practicality, you end up -- you  
5 don't want to end up making the District Attorney's  
6 office mad if you've got a good recommendation and --  
7 and then go into the courtroom and then try to -- at  
8 least I don't -- to try to change the rec.

9 I might approach the DA person and say,  
10 "Hey, I'm going to ask that court to suspend or waive  
11 or some of this stuff," maybe some of the fees,  
12 because there's a number of fees as you're aware of  
13 that that go into a criminal case.

14 So that may be something I will do at this  
15 point in time based upon the (inaudible) that  
16 you have -- that we talked about. So, yes, to answer  
17 your question. That was a long way to say yes.

18 Q. As a general practice, did you have OIDS  
19 attorneys coming in with District Attorneys or  
20 assistant District Attorneys saying, "We've agreed  
21 that you should not impose a statutory amount," or,  
22 "We've agreed that you should impose a lower amount,"  
23 as a judge?

24 A. I had different attorneys that -- assistant  
25 District Attorneys that would ask for a standard --



1 they would work out a recommendation, so I'm  
2 presented with a recommendation. There may be a  
3 question raised at that sentencing time by the OIDS  
4 attorney to say -- about the fine or something, or a  
5 lot of times, he might just say the fines and costs  
6 are left to the court.

7 So some attorney -- ADA's give you a fines  
8 of costs. Some just leave it to -- set by the court  
9 within the range of punishment, so -- of fines, yes.  
10 So --

11 Q. But the general practice of OIDS attorneys  
12 who appeared before you was not to ask for a complete  
13 waiver and not to ask for a reduction of --

14 A. Correct.

15 Q. -- total fines, fees and costs?

16 A. Yes.

17 MR. WILLIFORD: Object to the form.

18 THE WITNESS: So I cut you off. Yes,  
19 correct.

20 MR. FOWLER: I'm sorry. Jon, did you  
21 object?

22 I did, yes.

23 THE COURT REPORTER: Thank you.

24 MR. FOWLER: Okay.

25 MR. WILLIFORD: It was -- it was compound.

1 That would be the basis.

2 MR. FOWLER: Okay. Thank you.

3 MR. WILLIFORD: So, yeah, you're --

4 MR. FOWLER: Well, I'll just split it up so  
5 that we have a clear record.

6 BY MR. FOWLER:

7 Q. Mr. DeLapp, you'd agree that the general  
8 practice was for OIDS attorney not to ask for a  
9 complete waiver of the total of fines, fees, and  
10 costs?

11 A. Correct.

12 Q. And the general practice of the OIDS  
13 attorneys who appeared before you was not to ask for  
14 even a reduction of the total of fines, fees,  
15 costs?

16 A. Correct.

17 Q. Mr. DeLapp, when did you learn that you  
18 were being investigated for allegations of misconduct  
19 as a judicial officer?

20 A. Got complaints coming in, I want to say  
21 late 2016, 2017 -- well, 2017 -- I don't have that  
22 information in front of me. That wasn't something I  
23 looked at, so -- but it was, like, 2016, 2017  
24 complaints. Anonymous complaints were coming in,  
25 so -- I guess around that time, yes.

1 Q. Were any of those complaints coming in to  
2 the Washington County Courthouse?

3 A. No, they went to -- turned into Oklahoma  
4 City, and then they would send them to me to get a  
5 response on.

6 Q. So was it over a year before you resigned  
7 that you first learned of the allegations of  
8 misconduct?

9 A. That I got complaints to respond to, yes.

10 Q. What were the complaints that you had to  
11 respond to?

12 A. I'm not going to answer that. I'm going to  
13 invoke my right not to answer that. Those are  
14 confidential and, as far as I know, are not -- I'm  
15 not -- I'm not going to answer that, so --

16 MR. FOWLER: Mr. Esser, I -- excuse me. Do  
17 you want to take a break with your client, unless you  
18 have a privilege?

19 BY MR. FOWLER:

20 Q. Mr. DeLapp, I don't think you can  
21 decline --

22 A. Mr. Esser is not here at this point. He  
23 had to go up to a hearing, so -- I believe that I --  
24 those are confidential by statute, and I responded to  
25 those. That matter has been closed, and so I --

1 Q. Mr. DeLapp, then, just so we have a clear  
2 record in case this comes up later, you're declining  
3 to answer my question, what were you being  
4 investigated for in terms of allegations of  
5 misconduct as a judicial officer?

6 A. Yes.

7 Q. You're aware that news agencies picked up  
8 the allegations of misconduct against you?

9 A. Yes.

10 Q. News agencies picked up on the story of  
11 your contempt charge against the woman with sunflower  
12 seeds in your courtroom?

13 A. Yes.

14 Q. And the 20-plus hearings that you made her  
15 come back to?

16 A. I disagree with that, but I -- that she had  
17 to come back, yes.

18 Q. Tell me what you disagree with.

19 A. Again, I'm not going to discuss that -- the  
20 particulars of that case.

21 Q. Under what privilege, Mr. DeLapp?

22 A. I believe I have the right not to say  
23 anything that -- in regard to those confidential --  
24 that were rendered as confidential deals. That the  
25 newspaper got hold of those by other ways, doesn't

1 waive any privileges or rights that I have in how I  
2 conducted deals as a judicial officer.

3 Q. Mr. DeLapp, I'm going to ask that you or  
4 Mr. Esser follow up with a citation to a statute that  
5 you believe gives you that privilege or authority.  
6 Okay?

7 A. No.

8 Q. Are you asserting the Fifth Amendment  
9 privilege, Mr. DeLapp?

10 A. Not at this time, no.

11 Q. Are you saying that you ordered the woman  
12 and the -- with the sunflower seeds back to court  
13 less than 20 times?

14 A. No -- again, I'm not answering that  
15 question.

16 Q. When did you resign?

17 A. August of 2018.

18 Q. Did you do so voluntarily?

19 A. Yes.

20 Q. What was your understanding of what would  
21 happen if you did not resign?

22 A. I don't know. I -- I'm not going to answer  
23 that question because, again, that's confidential  
24 stuff between myself and the Supreme Court.

25 Q. Well, again, news agencies covered the

1 settlement agreement that you entered into that  
2 required you to step down as a judge. Right?

3 A. Yes, that I --

4 Q. So --

5 A. The settlement agreement, yes, that I  
6 signed, yes.

7 Q. As part of that agreement, can you ever run  
8 for the position of an associate district judicial or  
9 district judge anywhere in the State?

10 A. No, I cannot.

11 Q. As part of that agreement, can you ever  
12 serve as a special judge or a magistrate judge?

13 A. No, I cannot.

14 Q. As part of that agreement, can you serve as  
15 any type of judicial or pseudo judicial officer in  
16 any role across the Stat?

17 A. I believe I cannot, yes.

18 Q. As you were preparing to resign, did you  
19 leave anyone in the position of supervising the  
20 courthouse upon your departure?

21 A. When I resigned? Are you talking about  
22 when I was preparing to resign or -- I don't  
23 understand the question.

24 Q. You knew that you were going to -- well,  
25 let me ask you first, Mr. DeLapp: Are you still

1 comfortable proceeding without your attorney, Rick  
2 Esser, in this deposition?

3 A. Yeah, at this point so far, yes.

4 Q. Okay. If you change your mind on that,  
5 please let us know. You have the right to have an  
6 attorney with you as we question you about these  
7 topics, and if Mr. Williford or Mr. Pederson have any  
8 questions, you have the right to have an attorney  
9 during their questions as well. Okay?

10 A. I understand.

11 Q. I just want to be clear you're here  
12 voluntarily, we're not stripping you of your right to  
13 counsel. Right?

14 A. Gotcha.

15 Q. So at what point did you know that you were  
16 going to resign?

17 A. Probably back sometime in the week before I  
18 actually resigned.

19 Q. So either August, late July?

20 A. Yeah, August, probably mid-August maybe.

21 Q. So you're sitting there in the week or so  
22 before you're about to resign. Do you make any plans  
23 to turn over control and supervision of the  
24 courthouse to any of your colleagues, like, for  
25 example, Special Judge Sigler or the associate

1 district judge in the courthouse?

2 A. No. No, it would just be happening upon me  
3 resigning, I believe.

4 Q. Did you give any guidance or leave any  
5 guidance about how special judges who were appointed  
6 by you or your predecessors should be overseen?

7 A. No.

8 Q. Did you give any guidance on to whom a  
9 special judge should report in your absence?

10 A. No.

11 Q. Was there an independent Bar complaint  
12 initiated against you, Mr. DeLapp?

13 A. Yes.

14 Q. What was the resolution of the independent  
15 Bar complaint that was launched against you?

16 A. It was dismissed.

17 Q. Was that under an agreement as well?

18 A. No.

19 Q. On what basis was it dismissed?

20 A. They just -- I just got a letter from the  
21 Bar saying it had dismissed -- it was dismissed.

22 Q. Were you censored in any way?

23 A. No.

24 Q. You're saying that the letter that the Bar  
25 sent you after their investigation didn't indicate



1 why they were dismissing the Bar complaint?

2 A. It was dismissed, so you'll have to ask  
3 them.

4 Q. I'm asking you about the letter that you  
5 received. Is it your testimony that the letter that  
6 you received gave no explanation of why the Bar  
7 complaint was dismissed?

8 A. Exactly. That's my understanding. I don't  
9 have the letter in front of me, so -- I'm trying to  
10 think if I do have it here. I don't think I --

11 Q. Okay. Would you be willing to send us a  
12 copy at the conclusion of this deposition?

13 A. On the say-so of my attorney, yes.

14 Q. Okay. On the restrictions that bar you  
15 from holding any judicial or pseudo judicial office,  
16 are there any other limitations that currently exist  
17 on your practice of law in the State of Oklahoma?

18 A. No.

19 Q. Are you currently under any sort of  
20 investigation presently, whether it be criminal,  
21 administrative, or anything else?

22 THE COURT REPORTER: What was that after  
23 administrative?

24 THE WITNESS: No.

25 THE COURT REPORTER: I'm sorry, I didn't

1 get the word after administrative.

2 MR. FOWLER: Administrative or anything  
3 else. Sorry, Susan, it was administrative or  
4 anything else.

5 THE COURT REPORTER: Thank you.

6 MR. FOWLER: Yeah, no problem.

7 I think just after moving to enter the  
8 exhibits that we used into evidence, I don't have  
9 anything else for you right now, Mr. DeLapp. I may  
10 have some follow-up after -- after my colleagues ask  
11 you some questions, though.

12 CROSS-EXAMINATION

13 BY MR. PEDERSON:

14 Q. Mr. DeLapp, my name is Devan Pederson. I'm  
15 representing Judges Thomas Vaclaw, and Sigler in this  
16 case.

17 A. All right.

18 Q. Would you -- would you agree with me that  
19 you're not required to do a Rule 8.1 hearing at  
20 sentencing? The sentencing is to be imposed pursuant  
21 to a plea agreement between criminal defendants and  
22 the District Attorney's office.

23 MR. FOWLER: Object to form, and I'll --  
24 if, Jon and Devan, you're okay with it, it will be a  
25 standing objection. I don't think that the judicial

1 defendants or the OIDS defendants are entitled to ask  
2 leading questions, the reason being is that Mr.  
3 DeLapp is allied with the defendants.

4 He's an adverse party to the plaintiffs,  
5 but he's not to the judicial defendants or the OIDS  
6 defendants. May I ask, though, Jon and Devan, are  
7 you fine with that being a standing objection?

8 MR. PEDERSON: You know, I'm not going to  
9 have very many questions. That's fine, but I just  
10 want to make sure I understand the basis is that it's  
11 a leading question?

12 MR. FOWLER: Yes.

13 MR. PEDERSON: Okay. That's fine.

14 MR. WILLIFORD: Yeah, that's -- that's  
15 fine, as long as that's the understanding, is that  
16 you're stating an objection is to any question that  
17 might actually be leading, yeah, that's fine.

18 THE COURT REPORTER: Who was that just  
19 speaking right now? Was that --

20 MR. WILLIFORD: That was me, Mr. Williford.

21 THE COURT REPORTER: Thank you.

22 MR. WILLIFORD: Yeah, you're welcome.

23 THE WITNESS: Could you ask the question  
24 again?

25 BY MR. PEDERSON:

1 Q. Yes, I'll give it a try. You were shown  
2 Rule 8.1, the ability -- the hearing on the ability  
3 to pay fines, fees, costs, and you were asked about  
4 holding that hearing at the time of sentencing.

5 And I said, would you agree that you're not  
6 required to hold an 8.1 hearing at the time of  
7 sentencing when the criminal defendant is represented  
8 by an attorney and his sentence is pursuant to a plea  
9 agreement at the District Attorney's office?

10 A. I would agree with that statement, yes.

11 MR. PEDERSON: That's all the questions  
12 that I have. Thank you.

13 MR. WILLIFORD: I -- I think I have just  
14 a -- okay. Let's see. Just a couple quick  
15 questions.

16 CROSS-EXAMINATION

17 BY MR. WILLIFORD:

18 Q. Just kind of a clarification: If you can't  
19 hear me or if I cut out, just obviously let me know.  
20 But Judge DeLapp, you mentioned a handful of times  
21 that these fees and costs were calculated almost  
22 exclusively by what I think you described as the  
23 KellPro system; is that correct?

24 A. Yes.

25 Q. And what is the KellPro system?

1           A.     Okay. In the State of Oklahoma, there are  
2 two different systems which you can get onto to look  
3 up cases. For a number of counties, it is the ODCR  
4 or KellPro. KellPro owns the ODCR. For  
5 in-the-courtroom purposes, we had -- if I want to  
6 look up a particular person, I can go into the  
7 KellPro, enter a case number or search by name and  
8 pull up a person's case.

9           That is the computer system in which the  
10 clerk's office puts in the fines, the costs, and it  
11 has the docket in. So -- so KellPro is in the  
12 courthouse, the KellPro system. That is then put  
13 onto O -- ODR -- ODCR, which you can go on the public  
14 thing and look at.

15           Obviously, on KellPro I can look at all  
16 scanned documents, I can look at if there is an  
17 order, whereas in ODCR you can't do that unless you  
18 pay a fee and those kind of things. But KellPro owns  
19 that -- it's the company that owns that. So there is  
20 a system where you can pull up a -- for example, Ms.  
21 Carter's case and go through and look at the costs,  
22 all the fees, whatever is, the -- whatever the  
23 warrant cost is, whatever the service cost, subpoena  
24 cost the court costs; all those are factored in there  
25 and put into those cases, and then it gives a total.

1 I assume that's where they get the total, and they  
2 add that in.

3 So it's kind of a long answer, but there's  
4 two different -- that's the -- for at least  
5 Washington County and other counties, KellPro is  
6 the -- is the provider which gives the court clerk's  
7 office and the district courts those dockets and  
8 those fees.

9 Q. Okay. Are those -- as it directly relates  
10 to the fees and costs and the amounts of those, are  
11 those numbers available or able to be determined  
12 prior to the sentencing being completed?

13 A. Well, the costs up to that point and the  
14 fees up to that point, so -- again, so, for example,  
15 if you're at sentencing and the court imposes fines  
16 and fees such as OIDS fees, OSBI fees, OSBI fees,  
17 court reporter fees, those are not going to be  
18 inputted into the system until the minute clerk  
19 actually goes down there and inputs those.

20 So sentencing is over, and so when it says  
21 that you are to pay those per the schedule they have  
22 at some point in time, those aren't done in real  
23 time, there's no computer that the -- that they have  
24 on the -- on the tables for the -- although I argue  
25 you do that for the minute clerks.

1 But there -- those -- all that stuff, you  
2 have costs up to that point and the fines and the  
3 fees up to that point, but you're going to be at  
4 it -- and just like general incarceration fees, until  
5 the -- that Washington Country District Court has --  
6 tells the jail that that person's been sentenced and  
7 that person now goes to DOC, and DOC now is  
8 responsible from this point forward to pay, those are  
9 all things that come after the fact.

10 So to answer your question, you have so  
11 much up to a certain point, but then -- at  
12 sentencing, and afterwards there are more fees and  
13 stuff that are added on.

14 Q. Right. Just so -- just so I'm clear and we  
15 understand each other that -- that prior to  
16 sentencing, the -- let's just say the OIDS attorneys  
17 do not have the ability to know what the final amount  
18 of fees and costs will be for each defendant that  
19 they represent; is that accurate?

20 A. I don't think anybody has that, including  
21 the OIDS attorneys, because, like I said, there --  
22 you -- there are then fees that are attached. They  
23 can have a general idea that as of this day,  
24 so-and-so owes \$500 in fees, and they know what the  
25 recommendation is. They don't know whether the judge

1 may or may not follow that.

2 But as far as every time you file a piece  
3 of paper, as you know, or file a J&S or you file  
4 something, those are all coming in after the costs,  
5 and the OIDS attorneys would not know the exact  
6 amount of that, correct.

7 Q. And you as the judge that would be imposing  
8 the sentences, you wouldn't know that either; is that  
9 true?

10 A. That's correct.

11 Q. Okay. I want to talk about your process in  
12 accepting a plea agreement, okay, just so I can kind  
13 of direct you as to where I'm going. When the  
14 defendant comes in to enter a plea in your courtroom,  
15 would it be your standard practice to place that  
16 defendant under oath before -- before speaking to  
17 them?

18 A. Yes. I mean, if -- typically all felony  
19 matters that are entering a plea or a youthful  
20 defendant that entered a plea, unless for some reason  
21 the attorney wants to waive, and even when they  
22 didn't want to waive it, or have a court reporter put  
23 the person under oath and swear them in, and then we  
24 would proceed with what was happening in the case on  
25 the plea agreement, yes.



1 Q. Okay. And you -- would it be your  
2 typically practice to ask the defendant who was  
3 entering the plea whether or not they understood the  
4 proceedings that they were entering into?

5 A. Yes. We follow the -- the -- I would go  
6 through the -- what we call the Lumpkin form or the  
7 Plea of Guilty Summary of Facts form and ask those  
8 questions, and then there's questions we actually ask  
9 the attorneys whether they've gone over those as  
10 well, yes. We would ask --

11 Q. Right.

12 A. -- them if they understand, yes.

13 Q. Right. And if the defendant informed you  
14 that they did not understand what was going on, what  
15 would be your typically response in that situation?  
16 Would you accept the plea?

17 A. No. Either have -- either take a break and  
18 decide to see if that question -- see what they  
19 didn't understand and have an opportunity to talk to  
20 their attorney. (Inaudible) the case I did not take  
21 a plea, and they either do not understand -- could  
22 not give, like, for example, a factual basis or did  
23 not understand the plea agreement or there was some  
24 question about it.

25 Obviously, the first thing you would do is,

1 you know, have -- have an opportunity for your  
2 attorney to talk to you and see if they can figure  
3 out what the miscommunication is if there -- or what  
4 the misunderstanding is.

5 Q. Okay. I want to switch gears a bit to  
6 the -- the cost review hearings that you would have.  
7 Okay? At the cost review hearings, or including the  
8 Rule 8 hearings if you would have those, would  
9 those -- let me ask this first: At those hearings,  
10 was there a prosecuting attorney there representing  
11 the State?

12 A. No. Typically there was not. Now, there  
13 would be if the person had a conjoint motion to  
14 revoke pending a lot of times. The State would file  
15 a motion to revoke, and we --

16 Q. Right.

17 A. -- would (ianudible) whether the person --  
18 and it would be there for that, but for just fines  
19 and costs, no, they were not there most --

20 Q. Right. So these hearings just -- on just  
21 the cost review docket, not a revocation --

22 A. Uh-huh.

23 Q. -- or -- or that -- these are not  
24 adversarial hearings --

25 A. That's correct.

1 Q. -- were they? Okay.

2 MR. WILLIFORD: Okay. I think that's all  
3 I've got.

4 MR. FOWLER: I think I have just a few more  
5 questions then, then we'll let you go, Mr. DeLapp.

6 REDIRECT EXAMINATION

7 BY MR. FOWLER:

8 Q. I want to follow up on a question that Mr.  
9 Pederson was asking you, and I'm going to show you  
10 again Exhibit X, which is 8.1. Can you see Exhibit X  
11 on your screen now?

12 A. Yes.

13 Q. Mr. Pederson asked you, "If there's a plea  
14 agreement, then the judicial hearing on the  
15 defendant's ability to pay isn't required," and you  
16 answered, "Yes, that's correct" --

17 MR. PEDERSON: Object to form.

18 BY MR. FOWLER:

19 Q. Right?

20 THE COURT REPORTER: Who just objected?  
21 I'm sorry.

22 MR. PEDERSON: Devan Pederson just  
23 objected. Misstates the -- the question I asked.

24 MR. FOWLER: Let me just reask the question  
25 then.

1 BY MR. FOWLER:

2 Q. Mr. DeLapp, what was your response to Mr.  
3 Pederson's question about the impact of a plea  
4 agreement on the requirements of Rule 8.1?

5 A. My understanding was that he did not have  
6 to do a hearing at that point in time if there was a  
7 plea agreement and the parties had agreed, and that  
8 there was a knowingly -- a voluntary plea agreement.  
9 That was my understanding of the question.

10 Q. Okay. And your answer was that as long as  
11 there was a plea agreement, then a judge would not be  
12 required to conduct the Rule 8.1 --

13 A. Yes.

14 Q. -- hearing? Now, take a look at Rule 8.1,  
15 and if you can tell us where the plea agreement  
16 exception lives and point it out --

17 A. I don't in 8.1.

18 Q. -- and read it to us.

19 A. Oh, I'm sorry. I don't see one in 8.1.

20 Q. Is there -- is there a plea agreement  
21 exception anywhere in Rule 8 where there's a statute  
22 that provides that as long as the plea agreement is  
23 entered, the provisions of Rule 8.1 through 8.7  
24 don't apply?

25 A. Not that I'm aware of.

1 Q. The criminal defendants who appeared in  
2 front of you, their plea agreements did not include  
3 an explicit waiver of their rights under Rule 8.1 to  
4 8.7, or the statutes we've been talking about, or the  
5 Constitution. Right?

6 A. Correct.

7 Q. When Mr. Pederson was asking you a  
8 question, he indicated that I was asking you  
9 questions indicating that this ability-to-pay hearing  
10 should be happening at sentencing. Now, Rule 8.1  
11 just requires that the ability-to-pay hearing happen  
12 at some point after fines and/or costs are imposed.  
13 Right?

14 A. Correct.

15 Q. There's no provision in here for that  
16 hearing to just be totally deleted or waived from the  
17 process. Right?

18 A. It's -- it -- the statute said when a  
19 Judgment and Sentence of a court either in whole or  
20 in part imposing the fine or -- a judicial hearing  
21 shall be conducted.

22 Q. Okay. Give me one second. Let me pull up  
23 another exhibit. I'm showing you Ms. Carter's  
24 Judgment and Sentence order.

25 A. Okay.

1 Q. Now, Mr. Williford was asking you that  
2 when -- when a defendant enters into a plea  
3 agreement, they affirm to you that they've been  
4 advised of the proceedings they were entering into.  
5 Right?

6 A. Yeah, there's a form they fill out, a  
7 Summary of Facts form, yes.

8 Q. The Lumpkin form?

9 A. Yeah, what we call it the Lumpkin form  
10 is.

11 Q. Now, neither the Lumpkin nor the actual  
12 Judgment and Sentence order tells defendants the  
13 total amount of fines, fees, costs, or restitution to  
14 which they'll be exposed?

15 A. That's correct.

16 Q. And based on what you were telling Mr.  
17 Williford, it's actually really difficult for a  
18 person to know what their total of fines, fees, and  
19 costs would be going into sentencing. Right?

20 A. Correct.

21 Q. And Rule 8.1, the requirement -- and I'm  
22 putting back up Exhibit X. Rule 8.1, the requirement  
23 that a hearing on ability to pay happen at judicial  
24 hearing, that guarantees that some inquiry will be  
25 done on the actual amount of fines, fees, and costs

1 that a judge imposed or was considering imposing.

2 Right?

3 MR. PEDERSON: Object to form.

4 THE WITNESS: Again, that's what it says,  
5 yes.

6 MR. FOWLER: So let me -- was it compound?  
7 Is that the objection?

8 MR. PEDERSON: I think that I'm speaking  
9 of -- I'm thinking of a different rule, actually, and  
10 so --

11 THE COURT REPORTER: Is this -- is this Mr.  
12 Williford?

13 MR. PEDERSON: This is Mr. Pederson.

14 THE COURT REPORTER: I'm sorry. Thank you.

15 MR. PEDERSON: I'm sorry, John. I -- if --  
16 if -- if you don't mind, what was your question  
17 again? I was thinking of a different rule when I  
18 heard your question that -- it prompted me to  
19 object.

20 MR. FOWLER: The gist of the question was,  
21 with folks not knowing exactly what their total of  
22 fines, fees, and costs will be going into a  
23 sentencing hearing, Rule 8.1 guarantees that there  
24 will be a judicial hearing at some point on the total  
25 of fines, fees, and costs that are imposed or that

1 may be imposed a part of a Judgment and Sentence  
2 order.

3 MR. PEDERSON: Okay. That's fine.

4 BY MR. FOWLER:

5 Q. Mr. DeLapp?

6 A. Yes, I believe that's correct, that -- yes,  
7 that's what it says.

8 Q. And when Mr. Williford was asking you  
9 questions about not knowing for sure what the fines,  
10 fees, and costs could be going into a sentencing  
11 hearing, am I right that a defense attorney could  
12 come up with a pretty good estimate of what their  
13 client would be exposed to in preparing for their  
14 sentencing hearing?

15 MR. WILLIFORD: Object to the form.

16 THE WITNESS: Want me to go ahead and  
17 answer right now or --

18 BY MR. FOWLER:

19 Q. Please do.

20 MR. WILLIFORD: Yeah, go ahead.

21 THE WITNESS: (Inaudible) time to look  
22 at -- go to the -- the court clerk's office and look  
23 on either O -- ODCR -- or KellPro probably the best,  
24 and they find out what the current costs are in the  
25 case. They wouldn't know if they had a



1 recommendation from the State.

2 For example, if the State has said it's  
3 going to be a \$500 fine, a \$50.00 victim compensation  
4 assessment, the court costs and the fees, then they  
5 would know to calculate like that.

6 And then if there's a -- you know, for  
7 example, a PSI fee that's \$250, if there's an OSBI  
8 fee that's \$150, there's an OIDS fee of \$250 in a  
9 felony case, there are standard things that would --  
10 may end up now. They could probably even -- figure  
11 out maybe close to what incarceration fees were, if  
12 they're -- you know, have their idea. Most -- almost  
13 all the people that I -- defendants know how many  
14 days they've been in jail, and it's \$38.00 a day.

15 So, yes, they -- you know, they could do  
16 that. You know, given that there are costs that will  
17 be incurred after sentencing that would be added in  
18 as far as certain things, you know, that -- they're  
19 kind of standard, but they could be added in, so  
20 anyway.

21 Q. Let me break that down. I think that  
22 explanation illuminated how these numbers are  
23 calculated. KellPro pulls from the statutes and  
24 rules that are promulgated that define fines and fees  
25 every year in Oklahoma?

1           A.     Yeah, there's a statute that sets out --  
2     yeah, it's exactly, that -- that the court's clerk's  
3     office -- there's a statute about -- and  
4     communications from AOC to the court clerk's office,  
5     cost administrator, what certain fees are. I believe  
6     they might be entitled to 20, but that's been a while  
7     since I looked at those.

8                 So, yeah, there are certain fees that are  
9     calculated in every criminal case, whether it's,  
10    like, trauma fund, the AFIS for the fingerprinting  
11    fund. There are a number of those that you can go  
12    through and see. If you pull up the docket page on  
13    cases, those, you know, would -- would appear as  
14    costs or they enter those in the cases, in the  
15    KellPro.

16                So if you look at Mrs. Ackerman's docket,  
17    you can see AFIS fee, forensic fee, CLEET fee, the  
18    mental health fee, the DAR fee, the sheriff's  
19    revolving fee, the Attorney General's victim services  
20    unit fee, the child abuse multidiscipline account.  
21    And that has grown -- that list has grown, and each  
22    one of those is put onto the docket what those  
23    amounts are.

24                And then you can get the actual costs of  
25    the case, which are, as you said, are set, out the

1 filing, those kind of deals, what the costs are, and  
2 -- but you have CLEET fees, you have all those fees  
3 that are attached.

4 So, yes, those are in KellPro. Those --  
5 and then those are -- an application for a  
6 court-appointed fee -- attorney fee unless waived is  
7 \$40.00; that's put in there. So those fees are  
8 calculated as the case goes along, and it's in  
9 KellPro.

10 Q. So KellPro isn't a magic system that pulls  
11 numbers out of the ether; it's pulling numbers from  
12 statutes and rules. Right?

13 A. Yeah, I -- I -- as far as -- I mean, you're  
14 getting beyond my technical capabilities. I don't  
15 know where -- I mean, those may automatically in  
16 every case that the -- you know, every case, not just  
17 criminal cases. But, you know, if you -- for  
18 example, I go file a guardianship and it's kin --  
19 kinship/guardianship, the filing fee is \$67.00.  
20 That's by statute.

21 So, yes, if it's not -- you know, those are  
22 all by statute, and those are all -- how they come  
23 into KellPro, whether the clerk's (inaudible) enter  
24 them or they automatically up when their enter a CF  
25 number or a CM number or a PG number, I -- you'll

1 have to ask somebody in the court clerk's office.

2 Q. Sure. If you were preparing one of your  
3 clients in your criminal defense practice for their  
4 sentencing, you could use your time, go to the AOC  
5 website, and figure out what charts they have for  
6 fines, fees, and costs. Right?

7 A. Yes.

8 Q. And if you were preparing your client for  
9 sentencing, you could pull the statutes that control  
10 things. Right?

11 A. Yes.

12 Q. And if you were preparing for a sentencing,  
13 I assume you'd also rely on your many years of  
14 practice as an ADA and a judge in setting these  
15 fines, fees, and costs. Right?

16 A. Correct.

17 Q. So that even if you couldn't tell your  
18 client exactly, Mr". Client you are going to be  
19 facing \$9,500," you could say, "Mr. Client, I think,  
20 based on my experience and the statutes and the  
21 rules, you're facing somewhere between \$8,000 and  
22 \$10,000." Right?

23 A. Correct.

24 Q. Did -- did any OIDS attorney before you  
25 ever say, "Judge DeLapp, I've talked through all of

1 the possible fines, fees, and costs that may be  
2 imposed on my client, and he or she is fully aware of  
3 what they're walking into"?

4 A. No. He would say, "These are what the  
5 fines and costs are, and you're going to" -- I've  
6 heard some of them tell their clients or tell the  
7 court, I mean, in front of the court that there's  
8 going to be additional based upon, you know, jail  
9 incarceration fees or different things that are going  
10 to be calculated in. So I've heard that. Nobody's  
11 saying that, you know, this is what your question  
12 was, so --

13 Q. And as a defense attorney in Washington  
14 County, if your client were sentenced and then went  
15 down to the cost administrator and was given a total  
16 amount that you knew was beyond what that person  
17 could pay, you would ask for that hearing under Rule  
18 8.1 for your client to have a judicial determination  
19 of their ability to pay. Right?

20 MR. WILLIFORD: Object to the form. This  
21 is Mr. Williford.

22 Go ahead and answer that, sir.

23 THE WITNESS: Here's what -- here's -- I'll  
24 tell you what I have done as a defendant's -- I go  
25 with my client that is sentenced to the court

1 administrator office -- court -- excuse me, the cost  
2 administrator office and sit there and -- with the  
3 slip that he has just received and help them fill  
4 that out and listen to the questions that are asked  
5 by the current cost administrator, Ms. Glenda Powell,  
6 and we fill that out.

7 So, yes, if that was something way off,  
8 then that would be something that, you know, I would  
9 tell my client, or I would say, We need a" -- I  
10 don't -- you know, try to correct it there instead of  
11 going through a formal hearing.

12 But I understand you could have a hearing  
13 because they all have ordered back dates, so if  
14 there's something that comes in that is not correct,  
15 yes, then I would, you know, bring that to the  
16 attention of the court.

17 BY MR. FOWLER:

18 Q. As a defense attorney, you would try to  
19 make sure that your client was not being charged a  
20 total of fines, fees, and costs beyond that which he  
21 or she could reasonably pay?

22 A. Correct.

23 Q. And you would advocate, either in court or  
24 with a cost administrator, to get that outcome for  
25 your client to pull the amount down to an amount that

1 he or she could reasonably pay?

2 A. I -- I -- yes. As I said earlier, I  
3 believe that is something that you would do. Like I  
4 said, probably talk to the DA's office first, tell  
5 them that you're going to do that, that you want to  
6 lower a fine or something like that, yes. But --  
7 yes, the answer to -- that's something that I would  
8 do and would tend to do, you know, after today as  
9 well, so --

10 Q. Okay.

11 MR. FOWLER: Thank you, Mr. DeLapp.

12 THE WITNESS: Any follow-up questions?

13 MR. PEDERSON: No, I have no follow-up  
14 questions.

15 THE WITNESS: So are -- are we done? Am I  
16 ready -- can I go?

17 MR. WILLIFORD: I'm -- I'm good, yeah.

18 THE WITNESS: Okay. Thank you very much.

19 MR. FOWLER: Susan, I'm going to follow up  
20 with you hopefully by the end of the day. I don't  
21 think we're going to ask for it to be expedited, but  
22 I want to have a conversation with my colleague about  
23 that to determine whether we want it expedited.

24 THE COURT REPORTER: Okay. Do you want to  
25 ask him if he needs to read and sign or waive?

1 MR. WILLIFORD: I think he's already gone.

2 THE VIDEOGRAPHER: Okay. We're going off  
3 the record at 2:56 p.m.

4 (Deposition concluded at 2:56 p.m.)  
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J U R A T

FEENSTRA -V- SIGLER

JOB FILE NO. 147826

I, CURTIS DELAPP, do hereby state under oath  
that I have read the above and foregoing deposition  
in its entirety and that the same is a full, true and  
correct transcription of my testimony so given at  
said time and place, except for the corrections  
noted.

\_\_\_\_\_  
Signature of Witness

Subscribed and sworn to before me, a Notary  
Public in and for the State of Oklahoma on this, the  
\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

My Commission Number: \_\_\_\_\_

E R R A T A S H E E T

FEENSTRA -V- SIGLER  
DEPOSITION OF CURTIS DELAPP  
REPORTER: SUSAN E. BOUDIN, CSR  
DATE TAKEN: NOVEMBER 6, 2020  
JOB FILE NO. 147826

PAGE LINE CORRECTION

[illegible]

C E R T I F I C A T E

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

I, Susan E. Boudin, a Certified Shorthand  
Reporter within and for the State of Oklahoma,  
certify that CURTIS DELAPP was by me sworn to testify  
the truth; that the deposition was taken by me in  
stenotype and thereafter transcribed by computer and  
is a true and correct transcript of the testimony of  
the witness; that the deposition was taken by me from  
Oklahoma City, Oklahoma, via Zoom, with the witness  
and parties at their residences or offices, on  
November 6, 2020; and that I am not attorney for nor  
relative of either party or otherwise interested in  
this action.

Witness my hand and seal of office on this 23rd  
day of November, 2020.

Susan E. Boudin, CSR  
CSR #1923